NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Washington, D.C.

Calendar No. 166

101ST CONGRESS *1st Session*	SENATE	REPORT 101-82

VETERANS' AGENT ORANGE EXPOSURE AND VIETNAM SERVICE BENEFITS ACT OF 1989

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1153

together with

ADDITIONAL VIEWS

JULY 24, (legislative day, JANUARY 3, 1989).—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

19-632 WASHINGTON : 1989

S763-2

COMMITTEE ON VETERANS' AFFAIRS

ALAN CRANSTON, California, *Chairman*

SPARK M. MATSUNAGA, Hawaii	FRANK H. MURKOWSKI, Alaska
DENNIS DeCONCINI, Arizona	ALAN K. SIMPSON, Wyoming
GEORGE J. MITCHELL, Maine	STROM THURMOND, South Carolina
JOHN D. ROCKEFELLER IV, West Virginia	ARLEN SPECTER, Pennsylvania
BOB GRAHAM, Florida	JAMES M. JEFFORDS, Vermont

JONATHAN R. STEINBERG, *Chief Counsel/Staff Director*
ALAN C. PTAK, *Minority Chief Counsel/Staff Director*

CONTENTS

	Page
Committee amendments	1
Introduction	22
Summary of S. 1153 as reported	23
Discussion	24
Interim period for award of benefits for Vietnam veterans with non-Hodgkin's lymphoma and certain sarcomas	36
Presumption of service connection for chloracne	39
Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents	40
Results of examinations and treatment of veterans for disabilities related to exposure to certain herbicides or to service in Vietnam	43
Tissue archiving system	45
Scientific research feasibility studies program	46
VA outreach services	47
Report relating to research on treatments for exposure to dioxin and other toxic agents	48
Extension of health-care eligibility based on Agent Orange or radiation exposure	48
Ranch Hand study amendments	51
Cost estimate	52
Regulatory impact statement	56
Tabulation of votes cast in committee	56
Agency reports	57
Additional views of Senators Frank H. Murkowski, Alan K. Simpson, and Strom Thurmond on S. 1153, the proposed "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989"	60
Changes in existing law made by S. 1153 as reported	65

Calendar No. 166

101ST CONGRESS
1st Session

SENATE

REPORT
101-82

VETERANS' AGENT ORANGE EXPOSURE AND VIETNAM SERVICE BENEFITS ACT OF 1989

JULY 24 (legislative day, JANUARY 3), 1989.—Ordered to be printed

---

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1153]

The Committee on Veterans' Affairs, to which was referred the bill (S. 1153) to amend title 38, United States Code, to provide for the establishment of presumptions of service-connection between certain diseases experienced by veterans who served in Vietnam during the Vietnam era and exposure to certain toxic herbicide agents used in Vietnam; to provide for interim benefits for veterans of such service who have certain diseases; to improve the reporting requirements relating to the "Ranch Hand Study"; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989".

[SEC. 2. INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA AND CERTAIN SARCOMAS.

[(a) PRESUMPTIVE DISABILITY AND DEATH BENEFITS.—(1) In the case of a veteran—

19-632

[(A) who served in the active military, naval, or air service in Vietnam during the Vietnam era, and

[(B) who has—

[(i) non-Hodgkin's lymphoma, or

[(ii) a soft-tissue sarcoma,

the Secretary of Veterans Affairs shall, except as provided in subsection (b), pay a monthly disability benefit to the veteran in accordance with this section for any disability resulting from that disease.

[(2) If a veteran referred to in paragraph (1) dies from a disease referred to in clause (B) of such paragraph, the Secretary shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

[(b) EXCEPTIONS.—Benefits may not be paid in the case of a veteran under this section with respect to a disease referred to in subsection (a)(1)(B) if—

[(1) there is affirmative evidence that such disease was not incurred by that veteran during active military, naval, or air service in Vietnam during the Vietnam era; or

[(2) there is affirmative evidence to establish that, between the date of that veteran's most recent departure from Vietnam during such service and the onset of such disease, the veteran suffered an intercurrent injury or disease recognized as a cause of such disease referred to in subsection (a)(1)(B).

[(c) DISABILITY BENEFIT.—A disability benefit payable to a veteran under this section for a disability resulting from a disease referred to in subsection (a)(1)(B) shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for such disability if the disability were determined to be service-connected.

[(d) DEATH BENEFIT.—(1) A death benefit is payable under this section to the survivors of a deceased veteran who, if the cause of the veteran's death had been a service-connected or compensable disability, would be entitled to dependency and indemnity compensation under chapter 13 of that title.

[(2) The amount of the death benefit payable to a survivor of a deceased veteran under this section shall be the rate that would be applicable to such survivor under such chapter 13 if the veteran's death had been the result of a service-connected or compensable disability.

[(e) NONDUPLICATION OF BENEFITS.—A benefit may not be paid under this section with respect to a disability or death of a veteran resulting from a disease referred to in subsection (a)(1)(B) for any month for which compensation is payable to that veteran for that disability under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

[(f) TREATMENT OF DISABILITY OR DEATH AS SERVICE-CONNECTED EXCEPT FOR COMPENSATION PURPOSES.—A disability or death from a disease referred to in subsection (a)(1)(B) not otherwise considered service-connected for purposes of laws administered by the Department of Veterans Affairs shall be treated for purposes of all laws of the United States (other than the provisions of chapter 11 (other than sections 357, 358, and 361) of title 38, United States Code, and chapter 13 of such title) as if such disability or death were service-connected. The receipt of a disability benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were disability compensation under chapter 11 of such title. The receipt of a death benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of such title.

[(g) AWARD OF BENEFITS.—Section 3010(g) of title 38, United States Code, shall apply to the award of benefits under this section.

[(h) EXPIRATION OF INTERIM BENEFITS.—(1) No benefit may be paid or service provided by virtue of this section for any period beginning after April 15, 1992.

[(2) If a joint resolution described in paragraph (3) (relating to the extension of authority to pay benefits under this section or the making of such authority permanent) is introduced in either House of Congress after January 1, 1992, Congressional action on such joint resolution shall, subject to paragraph (8), be subject to the rules set out in this subsection.

[(3) For purposes of paragraph (2), the term "joint resolution" means only a joint resolution—

[(A) which does not have a preamble;

[(B) the matter after the resolving clause of which is—

[(i) as follows: "That section 2(h)(1) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is amended by striking out 'April 15, 1992' and inserting in lieu thereof

'_____'.", the blank space being filled with a date; or

[(ii) as follows: "That paragraph (1) of section 2(h) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is repealed"; and

[(C) the title of which is—

[(i) as follows: "A joint resolution extending the authority to pay certain benefits relating to military service in Vietnam"; or

[(ii) as follows: "A joint resolution making permanent the authority to pay certain benefits relating to military service in Vietnam".

[(4) A resolution described in paragraph (3) introduced in the House of Representatives shall be referred to the Committee on Veterans' Affairs of the House of Representatives. A resolution described in paragraph (3) introduced in the Senate shall be referred to the Committee on Veterans' Affairs of the Senate.

[(5) If the committee to which a resolution described in paragraph (3) is referred has not reported such resolution (or an identical resolution) within the 60-day period beginning on the date on which such resolution is introduced, such committee shall be discharged from further consideration of such resolution as of the day after the last day of such period, and such resolution shall be placed on the appropriate calendar of the House involved.

[(6)(A) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under paragraph (5)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

[(B) Debate on the resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

[(C) Immediately following the conclusion of the debate on a resolution described in paragraph (3) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

[(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (3) shall be decided without debate.

[(7)(A) If, before the passage by one House of a resolution of that House described in paragraph (3), that House receives from the other House a resolution described in paragraph (3), then the procedures specified in this paragraph shall apply.

[(B) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (C)(ii).

[(C) With respect to a resolution described in paragraph (3) of the House receiving the resolution—

[(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

[(ii) the vote on final passage shall be on the resolution of the other House.

[(D) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

[(8) This subsection is enacted by Congress—

[(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (3), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

[(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

[(i) NOTIFICATION OF THE PROVISIONS OF THIS SECTION.—(1) The Secretary of Veterans Affairs shall take all reasonable actions—

[(A) to publicize the provisions of this section, not later than 30 days after the date of the enactment of this Act; and

[(B) to provide actual notice of the provisions of this section, not later than 30 days after the date of the enactment of this Act—

[(i) to each person described in subsection (a) who, before the date specified in subsection (k), has filed any claim for benefits under programs administered by the Department of Veterans Affairs on the basis of a disease referred to in subsection (a)(1)(B); and

[(ii) in the case of a veteran who dies after filing such a claim but before the provisions of this section are publicized, to the surviving spouse, children, and parents of such veteran, if any.

[(2) The Secretary shall enclose with at least three distributions of benefits payment checks to each veteran or other person receiving benefits under this section a notice that the authority to pay benefits under this section is temporary. Each notice shall contain the date of the expiration of such authority. The first notice shall be enclosed with the first payment of such benefits to a veteran. The last notice shall be enclosed with the last payment of such benefits. At least one notice shall be enclosed with a payment distributed in approximately the middle of the estimated period during which the authority is to be in effect.

[(j) DEFINITIONS.—For the purposes of this section—

[(1) the term "veteran" has the meaning given such term in sections 101(2) and 401 of title 38, United States Code; and

[(2) the terms "child" and "parents" have the meanings given such terms in paragraphs (4) and (5), respectively, of section 101 of such title.

[(k) EFFECTIVE DATE.—This section, other than subsection (i), shall take effect on October 1, 1989. Benefits shall be paid in accordance with this section for periods beginning on or after such date, but no benefit may be paid for any period before such date by reason of the enactment of this section.

[SEC. 3. PRESUMPTION OF SERVICE CONNECTION FOR CHLORACNE.

[Section 312 of title 38, United States Code, is amended by adding at the end the following new subsection:

["(d) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era, the disease of chloracne shall be considered to have been incurred in or aggravated by such service in Vietnam, notwithstanding there is no record of evidence of such disease during the period of such service in Vietnam, if such disease or another acneform disease consistent with chloracne became manifest to a 10 percent degree of disability or more within one year after the last date on which that veteran performed such service in Vietnam.".

[SEC. 4. PRESUMPTION OF SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

[(a) FINDINGS.—Congress makes the following findings:

[(1) It is in the public interest to provide for an independent nonprofit scientific organization which has appropriate expertise and is not connected to the Department of Veterans Affairs to review and evaluate the available scientific evidence regarding associations between diseases and exposure to dioxin and other chemical compounds in herbicides and to make judgments on the degree and probability of such associations, because there is no uniform body of scientific literature on such issues.

[(2) The standard of proof required for a scientific conclusion of causation is higher than the standard of proof required for justification of a presumption, for purposes of veterans disability compensation laws, that an adverse health

effect is connected, based on sound medical and scientific evidence, to active service in the Armed Forces of the United States.

[(b) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by inserting after section 312 the following new section:

["§ 312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

["(a) IN GENERAL.—(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effects of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

["(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

["(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

["(b) DISEASES TO BE PRESCRIBED IN REGULATIONS.—(1) Whenever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

["(2) The Secretary shall periodically (not less often than biennially)—

["(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

["(B) determine whether any disease listed in such regulations does not have positive association with such effects.

["(3) The Secretary shall make determinations for the purpose of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

["(c) UTILIZATION OF CONTRACT SCIENTIFIC ORGANIZATION.—In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and estimates of a contract scientific organization as provided in this section.

["(d) REQUIRED ACTIVITIES OF CONTRACT SCIENTIFIC ORGANIZATIONS.—(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

["(A) to determine, in the case of each herbicide agent—

["(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

["(ii) which diseases (if any) have limited positive association with such biological effects;

["(iii) which diseases (if any) have insubstantial association with such biological effects; and

["(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

[“(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

[“(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

[“(A) Non-Hodgkin’s lymphoma.

[“(B) Each soft-tissue sarcoma.

[“(C) Lung cancer.

[“(D) Each other cancer.

[“(e) REQUIRED PROVISIONS FOR FIRST CONTRACT.—(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

[“(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents, including an evaluation of the CDC Selected Cancers Study report; and

[“(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

[“(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

[“(f) REQUIRED CONTRACT PROVISIONS RELATING TO PERIODIC DETERMINATIONS OF THE SECRETARY.—A contract entered into under subsection (c) of this section in connection with the Secretary’s periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

[“(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have become available since the last such survey and evaluation under this section; and

[“(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

[“(g) REPORTS OF CONTRACT SCIENTIFIC ORGANIZATIONS.—(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veterans’ Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

[“(2) Each report shall contain—

[“(A) the name of each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

[“(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

[“(C) the name of each disease (if any) determined to have insubstantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

[“(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

[“(i) a discussion of the biological basis for the association;

[“(ii) the contract scientific organization’s estimate of the statistical significance of the association;

[“(iii) the contract scientific organization’s estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

[“(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

[“(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

[“(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide

agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

"(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this subsection and include in such report—

"(i) a description of the evidence that supports such determination;

"(ii) a description of the evidence (if any) that supports alternative conclusions; and

"(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

"(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

"(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the later of (A) the date 60 days after the date on which the contract scientific organization obtains a copy of the CDC Selected Cancers Study report, or (B) the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989.

"(h) ACTIONS OF THE SECRETARY AFTER RECEIVING THE FIRST REPORT.—(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

"(A) for the purpose of subsection (b)(1) of this section—

"(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

"(B) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

"(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

"(i) include in the report to the Committees on Veterans' Affairs the scientific basis for not including that disease in the proposed regulations; and

"(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

"(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b). Such regulations shall be effective on the date of issuance.

"(i) ACTIONS OF THE SECRETARY AFTER RECEIVING A PERIODIC REPORT.—(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

"(A) determine in accordance with subsection (b)(3) of this section whether—

"(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) any disease listed in such regulations does not have positive association with such effects; and

"(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

"(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may be, pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

["(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

["(j) EFFECT OF REMOVAL OF DISEASE FROM REGULATIONS.—Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

["(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

["(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

["(k) LIMITATION ON CONTRACT AUTHORITY.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

["(l) TERMINATION OF EFFECTIVENESS OF THIS SECTION.—(1) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

["(2) Paragraph (1) shall not affect the continued effectiveness of—

["(A) subsection (a) of this section and the regulations referred to in such subsection; and

["(B) subsection (j) of this section.

["(m) DEFINITIONS.—For the purposes of this section—

["(1) the term 'Vietnam veteran' means a veteran who performed Vietnam service;

["(2) the term 'Vietnam service' means active military, naval, or air service in Vietnam during the Vietnam era;

["(3) the term 'herbicide agent' means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era;

["(4) the term 'biological effect', with respect to exposure to an herbicide agent, means—

["(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

["(B) each biological effect of such exposure on humans that it is reasonable to infer on the basis of the known biological effects of such exposure on appropriate animal models;

["(5) the term 'positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association;

["(6) the term 'limited positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association;

["(7) the term 'insubstantial', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that there is some credible evidence for the association but the evidence is not substantial;

["(8) the term 'relative risk', with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section, shall have the meaning determined by such organization and specified in such report;

["(9) the term 'contract scientific organization', with respect to a contract under this section, means—

["(A) the National Academy of Sciences; or

["(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate ex-

pertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into;

[''(10) the term 'soft-tissue sarcoma' means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma; and

[''(11) the term 'CDC Selected Cancers Study report' means the report submitted to Congress by the Secretary of Veterans Affairs that contains the final results of the Selected Cancers Study conducted by the Centers for Disease Control pursuant to section 307 of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96–151; 38 U.S.C. 219 note).''.

[(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

[''312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.''.

[(c) CONFORMING AMENDMENT.—Section 313 of title 38, United States Code, is amended by inserting ''or 312A'' after ''section 312'' each place it appears.

[(d) INTERIM REGULATIONS.—If the authority to pay benefits under section 2 of this Act expires before the Secretary of Veterans Affairs issues final regulations under section 312A(h) of title 38, United States Code (as added by subsection (b)), the Secretary shall issue emergency regulations, effective upon issuance, providing for the payment of disability compensation under chapter 11 of such title to each veteran or survivor who receives benefits under section 2 of this Act for a disease listed in regulations (if any) proposed by the Secretary under section 312A(h)(1)(A) of such title (as added by subsection (b)). Payment of such disability compensation shall be effective on the date of the expiration of the authority under section 2 of this Act. The Secretary shall pay disability compensation to such a veteran pursuant to this paragraph without requiring such veteran to submit an application in addition to the application submitted for benefits under section 2 of this Act.

[(e) SPECIAL EFFECTIVE DATE FOR AWARDS OF DISABILITY COMPENSATION.—If the Secretary of Veterans Affairs issues final regulations under subsection (h)(2) of section 312A of title 38, United States Code (as added by subsection (b)), after April 15, 1993, any award of disability compensation under chapter 11 of such title (in the case of a claim received by the Secretary before the effective date of such final regulations) on the basis of a presumption provided in subsection (a) of such section 312A shall be effective on the later of April 16, 1993, or the date determined under section 3010 of such title. However, benefits may not be paid to any person under chapter 11 of such title pursuant to this subsection for any period for which benefits are paid to such person under such chapter pursuant to subsection (d).

[SEC. 5. RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM.

[(a) IN GENERAL.—The Secretary of Veterans Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) is obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, by reason of eligibility provided in section 610(e)(1)(A) of title 38, United States Code, and (2) is likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance referred to in such section or between such disabilities and active military, naval, or air service in Vietnam during the Vietnam era.

[(b) ANNUAL REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

[(1) the information compiled in accordance with subsection (a);

[(2) the Secretary's analysis of such information;

[(3) a discussion of the types and incidences of disabilities identified by the Department of Veterans Affairs in the case of veterans referred to in subsection (a);

[(4) the Secretary's explanation for the incidence of such disabilities;

[(5) other explanations for the incidence of such disabilities considered reasonable by the Secretary;

[(6) the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such disabilities and exposure to dioxin or any other toxic substance referred to in section 610(e)(1)(A) of title 38,

United States Code, or between such disabilities and active military, naval, or air service, in Vietnam during the Vietnam era; and

[(7) the evaluation of such report submitted by the Director of the Office of Technology Assessment pursuant to subsection (c)(2).

[(c) CONSULTATION WITH OTA.—(1) The Secretary of Veterans Affairs shall consult with the Director of the Office of Technology Assessment before compiling and analyzing any information under this section and shall submit each annual report required by subsection (b) to the Director before submitting such report to the committees referred to in such subsection.

[(2) The Director of the Office of Technology Assessment shall review each annual report submitted under paragraph (1) and transmit to the Secretary of Veterans Affairs the Director's evaluation of the content of the report.

[(d) FIRST REPORT.—The first report under subsection (b) shall be submitted one year after the date of the enactment of this Act.

[SEC. 6. TISSUE ARCHIVING SYSTEM.

[(a) ESTABLISHMENT OF SYSTEM.—For the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era, the Secretary of Veterans Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in Vietnam during the Vietnam era. The system may be administered by the Department of Veterans Affairs or under a contract awarded by the Secretary, whichever is more cost-effective.

[(b) SECURITY OF SPECIMENS.—The Secretary shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

[(c) AUTHORIZED USE OF SPECIMENS.—The Secretary may make blood and tissue available from the system for research referred to in subsection (a) in a manner consistent with the privacy rights and interests of the blood and tissue donors.

[(d) LIMITATIONS ON ACCEPTANCE OF SAMPLES.—The Secretary may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Secretary considers appropriate consistent with the purpose specified in the first sentence of subsection (a).

[(e) CONSULTATION REQUIREMENTS.—(1) To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences, the Secretary shall consult with the National Academy of Sciences regarding the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

[(2) In the event that the National Academy of Sciences does not enter into an agreement for consultation under paragraph (1), the Secretary shall consult with the Director of the Office of Technology Assessment on the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

[(f) CONTRACT AUTHORITY SUBJECT TO APPROPRIATION.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

[SEC. 7. SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM.

[(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Veterans Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

[(1) health hazards resulting from exposure to dioxin;

[(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era; and

[(3) health hazards resulting from active military, naval, or air service in Vietnam during the Vietnam era.

[(b) PROGRAM REQUIREMENTS.—(1) Under the program established pursuant to subsection (a), the Secretary shall, pursuant to criteria prescribed pursuant to paragraph (2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

[(2) The Secretary shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

[(c) REPORT.—The Secretary shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

[(d) CONSULTATION WITH THE NATIONAL ACADEMY OF SCIENCES.—To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences (1) the Secretary shall consult with the National Academy of Sciences regarding the establishment and administration of the program under subsection (a), and (2) the National Academy of Sciences shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program. The agreement shall require the National Academy of Sciences to submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the National Academy of Sciences considers appropriate regarding any studies reviewed under the agreement.

[(e) AUTHORITY SUBJECT TO APPROPRIATION.—The authorities to enter into contracts and to furnish financial assistance provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

[SEC. 8. OUTREACH SERVICES.

[Section 1204(a) of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687; 102 Stat. 4125) is amended—

[(1) in clause (1), by striking out ", as such information on health risks becomes known";

[(2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

[(3) by inserting "(1)" after "PROGRAM.—"; and

[(4) by adding at the end the following new paragraph:

["(2) The Secretary of Veterans Affairs shall annually furnish updated information on health risks described in paragraph (1)(A) to veterans referred to in paragraph (1).".

[SEC. 9. REPORT RELATING TO RESEARCH ON TREATMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS.

[Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing a discussion of the research being conducted to identify and develop treatments for physiological absorption of dioxin and other toxic agents similar to the toxic agents in herbicides used in support of United States and allied operations in Vietnam during the Vietnam era, including research relating to exposure to dioxin and other toxic agents outside Vietnam.

[SEC. 10. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

[Section 610(e)(3) of title 38, United States Code, is amended by striking out "September 30, 1990" and inserting in lieu thereof "December 31, 1993".

[SEC. 11. RANCH HAND STUDY AMENDMENTS.

[Section 1205 of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687; 102 Stat. 4126) is amended—

[(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

[(2) by inserting after subsection (b), the following new subsection (c):

["(c) ADVISORY RELATIONSHIP.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information."; and

[(3) in subsection (d), as redesignated by clause (1)—

[(A) by adding at the end of paragraph (1) the following: "The schedule shall provide for the preparation and submission of annual reports and a final report."; and

[(B) in paragraph (4), by inserting "in" after "report referred to".

[SEC. 12. DEFINITIONS.

[In this Act—

[(1) the terms "veteran", "service-connected", "active military, naval, or air service", and "Vietnam era" shall have the meanings given those terms in paragraphs (2), (16), (24), and (29), respectively, of section 101 of title 38, United States Code;

[(2) the term "disability" refers to a disability within the meaning of chapter 11 of such title; and

[(3) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

[SEC. 13. EFFECTIVE DATE.

[Except as provided as in section 2(k), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989".

SEC. 2. INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA AND CERTAIN SARCOMAS.

(a) PRESUMPTIVE DISABILITY AND DEATH BENEFITS.—(1) In the case of a veteran—

(A) who served in the active military, naval, or air service in Vietnam during the Vietnam era, and

(B) who has—

(i) non-Hodgkin's lymphoma, or

(ii) a soft-tissue sarcoma,

the Secretary of Veterans Affairs shall, except as provided in subsection (b), pay a monthly disability benefit to the veteran in accordance with this section for any disability resulting from that disease.

(2) If a veteran referred to in paragraph (1) dies from a disease referred to in clause (B) of such paragraph, the Secretary shall, except as provided in subsection (b), pay a monthly death benefit to the survivors of the veteran in accordance with this section.

(b) EXCEPTIONS.—Benefits may not be paid in the case of a veteran under this section with respect to a disease referred to in subsection (a)(1)(B) if—

(1) there is affirmative evidence that such disease was not incurred by that veteran during active military, naval, or air service in Vietnam during the Vietnam era; or

(2) there is affirmative evidence to establish that, between the date of that veteran's most recent departure from Vietnam during such service and the onset of such disease, the veteran suffered an intercurrent injury or disease recognized as a cause of such disease referred to in subsection (a)(1)(B).

(c) DISABILITY BENEFIT.—A disability benefit payable to a veteran under this section for a disability resulting from a disease referred to in subsection (a)(1)(B) shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for such disability if the disability were determined to be service connected.

(d) DEATH BENEFIT.—A death benefit payable under this section to the survivor of a deceased veteran who dies from a disease referred to in subsection (a)(1)(B) shall be paid at the rate that would be applicable to such survivor under chapter 13 of title 38, United States Code, if the veteran's death had been the result of a service-connected or compensable disability.

(e) NONDUPLICATION OF BENEFITS.—A benefit may not be paid under this section with respect to a disability or death of a veteran resulting from a disease referred to in subsection (a)(1)(B) for any month for which compensation is payable to that veteran for that disability under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

(f) TREATMENT OF DISABILITY OR DEATH AS SERVICE-CONNECTED EXCEPT FOR COMPENSATION PURPOSES.—A disability or death from a disease referred to in subsection (a)(1)(B) not otherwise considered service connected for purposes of laws administered by the Department of Veterans Affairs shall be treated for purposes of all laws of the United States (other than the provisions of chapter 11 of title 38, United States Code (except for sections 357, 358, 360, 361, and 362), and chapter 13 of such title) as if such disability or death were service connected. The receipt of a disability benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were disability compensation under chapter 11 of such title. The receipt of a death benefit under this section shall be treated for purposes of all

laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of such title.

(g) AWARD OF BENEFITS.—Section 3010(g) of title 38, United States Code, shall apply to the award of benefits under this section.

(h) EXPIRATION OF INTERIM BENEFITS.—(1) No benefit may be paid or service provided by virtue of this section for any period beginning after April 15, 1992.

(2) If a joint resolution described in paragraph (3) (relating to the extension of authority to pay benefits under this section or the making of such authority permanent) is introduced in either House of Congress after January 1, 1992, Congressional action on such joint resolution shall, subject to paragraph (8), be subject to the rules set out in this subsection.

(3) For purposes of paragraph (2), the term "joint resolution" means only a joint resolution—

(A) which does not have a preamble;

(B) the matter after the resolving clause of which is—

(i) as follows: "That section 2(h)(1) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is amended by striking out 'April 15, 1992' and inserting in lieu thereof '_____'.", the blank space being filled with a date that is later than April 14, 1993; or

(ii) as follows: "That paragraph (1) of section 2(h) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is repealed";

(C) the title of which is—

(i) as follows: "A joint resolution extending the authority to pay certain benefits relating to military service in Vietnam"; or

(ii) as follows: "A joint resolution making permanent the authority to pay certain benefits relating to military service in Vietnam"; and

(D) in the case of a resolution containing the matter specified in subclause (i) or (ii) of clause (B), is the first such resolution containing that matter introduced after January 1, 1992, in the House in which the resolution originates.

(4)(A) A resolution described in paragraph (3) introduced in the House of Representatives shall be referred to the Committee on Veterans' Affairs of the House of Representatives. A resolution described in paragraph (3) introduced in the Senate shall be referred to the Committee on Veterans' Affairs of the Senate.

(B) A committee to which a resolution has been referred pursuant to subparagraph (A) may not amend such resolution.

(5) If the committee to which a resolution described in paragraph (3) is referred has not reported such resolution (or an identical resolution) within the 60-day period beginning on the date on which such resolution is introduced, such committee shall be discharged from further consideration of such resolution as of the day after the last day of such period, and such resolution shall be placed on the appropriate calendar of the House involved.

(6)(A) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under paragraph (5)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, then, subject to the following sentence, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of. If such resolution has been reported by the committee with an amendment, the resolution shall (without further motion) first be recommitted to the committee with instructions to report forthwith the resolution as introduced without amendment.

(B) Debate on the resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of

19-632 O - 89 - 2

other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) Immediately following the conclusion of the debate on a resolution described in paragraph (3) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (3) shall be decided without debate.

(7)(A) If, before the passage by one House of a resolution of that House described in paragraph (3), that House receives from the other House a resolution described in paragraph (3) with an identical text, then the procedures specified in this paragraph shall apply.

(B) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (C)(ii).

(C) With respect to a resolution described in paragraph (3) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(D) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(8) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (3), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(i) NOTIFICATION OF THE PROVISIONS OF THIS SECTION.—(1) The Secretary of Veterans Affairs shall take all reasonable actions—

(A) to publicize the provisions of this section, not later than 30 days after the date of the enactment of this Act; and

(B) to provide actual notice of the provisions of this section, not later than 30 days after the date of the enactment of this Act—

(i) to each person described in subsection (a) who, before October 1, 1989, has filed any claim for benefits under programs administered by the Department of Veterans Affairs on the basis of a disease referred to in subsection (a)(1)(B); and

(ii) in the case of a veteran who dies after filing such a claim but before the provisions of this section are publicized, to the surviving spouse, children, and parents of such veteran, if any.

(2) The Secretary shall enclose with at least three distributions of benefits payment checks to each veteran or other person receiving benefits under this section a notice that the authority to pay benefits under this section is temporary. Each notice shall contain the date of the expiration of such authority as provided in subsection (h). The first notice shall be enclosed with the first payment of such benefits to a veteran. The last notice shall be enclosed with the last payment of such benefits. At least one notice shall be enclosed with a payment distributed in approximately the middle of the estimated period during which the authority is to be in effect as provided for in subsections (g), (h), and (k).

(j) DEFINITIONS.—For the purposes of this section—

(1) the term "veteran" has the meaning given such term in sections 101(2) and 401 of title 38, United States Code; and

(2) the terms "child", "parents", and "Vietnam era" have the meanings given such terms in paragraphs (4), (5), and (29), respectively, of section 101 of such title.

(k) EFFECTIVE DATE.—This section, other than subsection (i), shall take effect on October 1, 1989. Benefits shall be paid in accordance with this section for periods beginning on or after such date, but no benefit may be paid for any period before such date by reason of the enactment of this section.

SEC. 3. PRESUMPTION OF SERVICE CONNECTION FOR CHLORACNE.

Section 312 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(d) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era, the disease of chloracne shall be considered to have been incurred in or aggravated by such service in Vietnam, notwithstanding there is no record of evidence of such disease during the period of such service in Vietnam, if such disease or another acneform disease consistent with chloracne became manifest to a 10 percent degree of disability or more within one year after the last date on which that veteran performed such service in Vietnam.".

SEC. 4. PRESUMPTION OF SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) It is in the public interest to provide for an independent nonprofit scientific organization which has appropriate expertise and is not connected to the Department of Veterans Affairs to review and evaluate the available scientific evidence regarding associations between diseases and exposure in Vietnam during the Vietnam era to dioxin and other chemical compounds in herbicides and to make judgments on the degree and probability of such associations, because there is no uniform body of scientific literature on such issues.

(2) The standard of proof required for a scientific conclusion of causation is higher than the standard of proof required for justification of a presumption, for purposes of veterans' disability compensation laws, that an adverse health effect is connected, based on sound medical and scientific evidence, to active service in the Armed Forces of the United States.

(b) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by inserting after section 312 the following new section:

"§ 312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

"(a)(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effects of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

"(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

"(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

"(b)(1) Whenever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

"(2) The Secretary shall periodically (not less often than biennially)—

"(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

"(B) determine whether any disease listed in such regulations does not have positive association with such effects.

"(3) The Secretary shall make determinations for the purposes of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

"(c) In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and estimates of a contract scientific organization as provided in this section.

"(d)(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

"(A) to determine, in the case of each herbicide agent—

"(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

"(ii) which diseases (if any) have limited positive association with such biological effects;

"(iii) which diseases (if any) have insubstantial association with such biological effects; and

"(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

"(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

"(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

"(A) Non-Hodgkin's lymphoma.

"(B) Each soft-tissue sarcoma.

"(C) Lung cancer.

"(D) Each other cancer.

"(e)(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

"(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents, including an evaluation of the CDC Selected Cancers Study report; and

"(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

"(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

"(f) A contract entered into under subsection (c) of this section in connection with the Secretary's periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

"(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have become available since the last such survey and evaluation under this section; and

"(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

"(g)(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

"(2) Each report shall contain—

"(A) the name of each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(C) the name of each disease (if any) determined to have insubstantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

"(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

"(i) a discussion of the biological basis for the association;

"(ii) the contract scientific organization's estimate of the statistical significance of the association;

"(iii) the contract scientific organization's estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

"(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

"(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

"(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

"(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this subsection and include in such report—

"(i) a description of the evidence that supports such determination;

"(ii) a description of the evidence (if any) that supports alternative conclusions; and

"(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

"(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

"(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the later of (A) the date 60 days after the date on which the contract scientific organization obtains a copy of the CDC Selected Cancers Study report, or (B) the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989.

"(h)(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

"(A) for the purpose of subsection (b)(1) of this section—

"(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

"(B) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

"(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

"(i) include in the report to the Committees on Veterans' Affairs a discussion of the scientific basis for not including that disease in the proposed regulations; and

"(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

"(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b). Such regulations shall be effective on the date of issuance.

"(i)(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

"(A) determine in accordance with subsection (b)(3) of this section whether—

"(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) any disease listed in such regulations does not have positive association with such effects; and

"(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

"(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may be, pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

"(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

"(j) Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

"(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

"(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

"(k) The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

"(l) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

"(m) For the purposes of this section—

"(1) the term 'Vietnam veteran' means a veteran who performed Vietnam service;

"(2) the term 'Vietnam service' means active military, naval, or air service in Vietnam during the Vietnam era;

"(3) the term 'herbicide agent' means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era;

"(4) the term 'biological effect', with respect to exposure to an herbicide agent, means—

"(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

"(B) each biological effect of such exposure on humans that it is reasonable to infer on the basis of the known biological effects of such exposure on appropriate animal models;

"(5) the term 'positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association;

"(6) the term 'limited positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association;

"(7) the term 'insubstantial', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that

there is some credible evidence for the association but the evidence is not substantial;

"(8) the term 'relative risk', with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section, shall have the meaning determined by such organization and specified in such report;

"(9) the term 'contract scientific organization', with respect to a contract under this section, means—

"(A) the National Academy of Sciences; or

"(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate expertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into;

"(10) the term 'soft-tissue sarcoma' means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma; and

"(11) the term 'CDC Selected Cancers Study report' means the report submitted to Congress by the Secretary of Veterans Affairs that contains the final results of the Selected Cancers Study conducted by the Centers for Disease Control pursuant to section 307 of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96–151; 38 U.S.C. 219 note).".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

"312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.".

(c) CONFORMING AMENDMENT.—Section 313 of title 38, United States Code, is amended by inserting "or 312A" after "section 312" each place it appears.

(d) INTERIM REGULATIONS.—(1) If the authority to pay benefits under section 2 of this Act expires before the Secretary of Veterans Affairs issues final regulations under section 312A(h) of title 38, United States Code (as added by subsection (b)), the Secretary shall issue emergency regulations, effective upon issuance, providing for the payment of disability compensation under chapter 11 of such title to each veteran, or dependency and indemnity compensation under chapter 13 of such title to each survivor, who on the day before such expiration date is receiving benefits under section 2 of this Act for a disease listed in regulations (if any) proposed by the Secretary under section 312A(h)(1)(A) of such title (as added by subsection (b)).

(2) Payment of disability compensation and dependency and indemnity compensation pursuant to such regulations shall be effective on the date of the expiration of the authority under section 2 of this Act.

(3) The Secretary shall pay disability compensation to a veteran and dependency and indemnity compensation to a survivor pursuant to such regulations without requiring such veteran or survivor to submit an application in addition to the application submitted for benefits under section 2 of this Act.

(e) SPECIAL EFFECTIVE DATE FOR AWARDS OF DISABILITY COMPENSATION.—If the Secretary of Veterans Affairs issues final regulations under subsection (h)(2) of section 312A of title 38, United States Code (as added by subsection (b)), after April 15, 1993, any award of disability compensation under chapter 11, or dependency and indemnity compensation under chapter 13, of such title (in the case of a claim received by the Secretary before the effective date of such final regulations) on the basis of a presumption provided in subsection (a) of such section 312A shall be effective on the later of April 16, 1993, or the date determined under section 3010 of such title. However, benefits may not be paid to any person under chapter 11 or 13 of such title pursuant to this subsection for any period for which benefits are paid to such person under such chapter pursuant to subsection (d).

SEC. 5. RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) are obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, by reason of eligibility provided in section 610(e)(1)(A) of title 38, United States Code, and (2) are likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance re-

ferred to in such section or between such disabilities and active military, naval, or air service in Vietnam during the Vietnam era.

(b) ANNUAL REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

(1) the information compiled in accordance with subsection (a);

(2) the Secretary's analysis of such information;

(3) a discussion of the types and incidences of disabilities identified by the Department of Veterans Affairs in the case of veterans referred to in subsection (a);

(4) the Secretary's explanation for the incidence of such disabilities;

(5) other explanations for the incidence of such disabilities considered reasonable by the Secretary;

(6) the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such disabilities and exposure to dioxin or any other toxic substance referred to in section 610(e)(1)(A) of title 38, United States Code, or between such disabilities and active military, naval, or air service, in Vietnam during the Vietnam era; and

(7) the evaluation of such report submitted by the Director of the Office of Technology Assessment pursuant to subsection (c)(2).

(c) CONSULTATION WITH OTA.—(1) The Secretary of Veterans Affairs shall consult with the Director of the Office of Technology Assessment before compiling and analyzing any information under this section and shall submit each annual report required by subsection (b) to the Director before submitting such report to the committees referred to in such subsection.

(2) The Director of the Office of Technology Assessment shall review each annual report submitted under paragraph (1) and transmit to the Secretary of Veterans Affairs the Director's evaluation of the content of the report.

(d) FIRST REPORT.—The first report under subsection (b) shall be submitted one year after the date of the enactment of this Act.

SEC. 6. TISSUE ARCHIVING SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—For the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era, the Secretary of Veterans Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in Vietnam during the Vietnam era. The system may be administered by the Department of Veterans Affairs or under a contract awarded by the Secretary, whichever is more cost-effective.

(b) SECURITY OF SPECIMENS.—The Secretary shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

(c) AUTHORIZED USE OF SPECIMENS.—The Secretary may make blood and tissue available from the system for research referred to in subsection (a) in a manner consistent with the privacy rights and interests of the blood and tissue donors.

(d) LIMITATIONS ON ACCEPTANCE OF SAMPLES.—The Secretary may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Secretary considers appropriate consistent with the purpose specified in the first sentence of subsection (a).

(e) CONSULTATION REQUIREMENTS.—(1) To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences, the Secretary shall consult with the National Academy of Sciences regarding the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(2) In the event that the National Academy of Sciences does not enter into an agreement for consultation under paragraph (1), the Secretary shall consult with the Director of the Office of Technology Assessment on the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(f) CONTRACT AUTHORITY SUBJECT TO APPROPRIATION.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 7. SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Veterans Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

(1) health hazards resulting from exposure to dioxin;

(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era; and

(3) health hazards resulting from active military, naval, or air service in Vietnam during the Vietnam era.

(b) PROGRAM REQUIREMENTS.—(1) Under the program established pursuant to subsection (a), the Secretary shall, pursuant to criteria prescribed pursuant to paragraph (2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

(2) The Secretary shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

(c) REPORT.—The Secretary shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(d) CONSULTATION WITH THE NATIONAL ACADEMY OF SCIENCES.—To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences (1) the Secretary shall consult with the National Academy of Sciences regarding the establishment and administration of the program under subsection (a), and (2) the National Academy of Sciences shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program. The agreement shall require the National Academy of Sciences to submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the National Academy of Sciences considers appropriate regarding any studies reviewed under the agreement.

(e) AUTHORITY SUBJECT TO APPROPRIATION.—The authorities to enter into contracts and to furnish financial assistance provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 8. OUTREACH SERVICES.

Section 1204(a) of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687; 102 Stat. 4125) is amended—

(1) in clause (1), by striking out ", as such information on health risks becomes known";

(2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(3) by inserting "(1)" after "PROGRAM.—"; and

(4) by adding at the end the following new paragraph:

"(2) The Secretary of Veterans Affairs shall furnish the information described in paragraph (1) to the individuals listed in the Department of Veterans Affairs' Agent Orange Registry. Each year the Secretary shall (A) update that information, and (B) furnish the updated information to such individuals.".

SEC. 9. REPORT RELATING TO RESEARCH ON TREATMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing a discussion of the research being conducted to identify and develop treatments for physiological absorption of dioxin and other toxic agents similar to the toxic agents in herbicides used in support of United States and allied operations in Vietnam during the Vietnam era, including research relating to exposure to dioxin and other toxic agents outside Vietnam.

SEC. 10. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

Section 610(e)(3) of title 38, United States Code, is amended by striking out "December 31, 1990" and inserting in lieu thereof "December 31, 1993".

SEC. 11. RANCH HAND STUDY AMENDMENTS.

Section 1205 of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687; 102 Stat. 4126) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(2) by inserting after subsection (b), the following new subsection (c):

"(c) ADVISORY RELATIONSHIP.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information.";

(3) in subsection (d), as redesignated by clause (1)—

(A) by adding at the end of paragraph (1) "The schedule shall provide for the preparation and submission of annual reports and a final report."; and

(B) in paragraph (4), by inserting "in" after "report referred to"; and

(4) in paragraph (1) of subsection (e), as redesignated by clause (1), by striking out "Defense" and inserting in lieu thereof "Health and Human Services".

SEC. 12. DEFINITIONS.

In this Act—

(1) the terms "veteran", "service-connected", "active military, naval, or air service", and "Vietnam era" shall have the meanings given those terms in paragraphs (2), (16), (24), and (29), respectively, of section 101 of title 38, United States Code;

(2) the term "disability" refers to a disability within the meaning of chapter 11 of such title; and

(3) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

SEC. 13. EFFECTIVE DATE.

Except as provided in section 2(k), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

INTRODUCTION

On June 8, 1989, S. 1153 was introduced by Senator Thomas A. Daschle and was cosponsored by Senator John F. Kerry, Committee Chairman Senator Alan Cranston, Committee members Senators Spark Matsunaga, Dennis DeConcini, John D. Rockefeller, IV, Arlen Specter, and James Jeffords, and Senators Bill Bradley, Paul Simon, Timothy Wirth, Claiborne Pell, J. Robert Kerrey, Quentin Burdick, Tom Harkin, Albert Gore, Jr., Jeff Bingaman, Herbert Kohl, Daniel Patrick Moynihan, Joseph R. Biden, Jr., Larry Pressler, and John H. Chaffee. Joining later as cosponsors were Committee Member Senator George J. Mitchell and Senators John Heinz and Christopher J. Dodd.

As introduced, S. 1153 would have, among other things, provided for the payment of interim (from October 1, 1989, to April 15, 1992) disability benefits for Vietnam veterans with non-Hodgkin's lymphoma (NHL) and soft-tissue sarcoma (STS) (and survivors' benefits for deaths from either condition), equal to VA service-connected disability compensation (and dependency and indemnity compensation benefits); provided a mechanism for votes in both Houses after January 1, 1992, but prior to the expiration date of these interim benefits to extend them or make them permanent; created a mechanism pursuant to which VA must determine, based on an initial independent scientific review (as updated by biennial follow-up reviews) of all relevant evidence and on all other available scientific information, whether permanent presumptions for disability benefits should be accorded for NHL, STS, or any other diseases determined to have positive association with exposure to Agent Orange

or other herbicides in Vietnam; and extended, from September 30, 1990, to December 31, 1993, veterans entitlement to/eligibility for VA care based on exposure to Agent Orange or radiation. Other provisions in the bill as introduced would have mandated changes in various Federal Government efforts relating to Agent Orange matters.

On June 22, 1989, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on, among other measures, S. 1153. Testimony on S. 1153 was received from Senators Daschle and Kerry; Anthony J. Principi, Deputy Secretary of Veterans Affairs, and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and the Vietnam Veterans of America. Testimony relating to Agent Orange issues was submitted for the record of the hearing by the National Academy of Sciences, the Surgeon General of the United States Air Force, the Centers for Disease Control, and the Office of Technology Assessment.

After carefully reviewing the testimony from this hearing, the Committee met in open session on July 13, 1989, and, by voice vote, unanimously voted to report S. 1153 favorably to the Senate with an amendment in the nature of a substitute which incorporated the provisions of S. 1153 as introduced with modifications of a purely technical nature as well as revisions of the provisions under which a proponent of extending the interim benefits provided for in the bill, or making such benefits permanent, would be guaranteed a vote in the full Senate (or in the House) on a joint resolution providing for an extension or permanence so as to eliminate the possibility of requiring multiple votes on either such issue.

Summary of S. 1153 as Reported

S. 1153 as reported (hereinafter referred to as the "Committee bill") has ten substantive provisions that would:

1. Provide for the payment of interim (from October 1, 1989, to April 15, 1992) disability benefits for Vietnam veterans with non-Hodgkin's lymphoma (NHL) and soft-tissue sarcoma (STS) (and survivors' benefits for deaths from either condition), equal to VA service-connected disability compensation (and dependency and indemnity compensation benefits); and provide a mechanism for a vote in each House after January 1, 1992, but prior to the expiration date of these interim benefits on a joint resolution to extend them and on a joint resolution to make them permanent.

2. Create a mechanism pursuant to which VA must determine, based on an initial independent scientific review (as updated by biennial follow-up reviews) of all relevant evidence and on all other available scientific information, whether permanent presumptions for disability benefits should be accorded for NHL, STS, or any other diseases determined to have positive association with exposure to Agent Orange or other herbicides in Vietnam; and provide that the National Academy of Sciences (NAS) would conduct this scientific review (unless NAS declines in which case another independent contract, scientific entity would do so).

3. Establish a permanent presumption of service connection for chloracne in Vietnam veterans when that disease or another acne-

form disease consistent with chloracne became manifest within one year after Vietnam service.

4. Require VA to gather, analyze, and report annually to the two Veterans' Affairs Committees on data gathered from the records of Vietnam veterans who seek VA treatment for conditions they believe are related to exposure to Agent Orange or other herbicides in Vietnam.

5. Require VA to establish an archiving system to store voluntarily-contributed blood and tissue samples from Vietnam veterans for use in future research.

6. Require VA to fund appropriate, independent studies which would be designed to determine whether or not future scientific research is feasible on diseases or disabilities which may be related to exposure to Agent Orange or other herbicides or to health hazards related to Vietnam service.

7. Require the Secretary of Health and Human Services to submit a report, within 180 days after enactment, on research being conducted to identify and develop treatments for exposure to dioxin and other toxic agents similar to those in herbicides used in Vietnam.

8. Extend (from September 30, 1990, to December 31, 1993) veterans entitlement to/eligibility for VA health care based on exposure to Agent Orange or radiation.

9. Make technical changes in provisions in Public Law 100–687 which established VA outreach requirements relating to Agent Orange.

10. Make technical changes in provisions in Public Law 100–687 which mandated certain reporting requirements for the Air Force on its Ranch Hand Study.

Discussion

The Committee bill is substantively very similar to legislation passed by the Senate last October 18 during consideration of S. 2011. That legislation—the Daschle-Kerry-Cranston amendment (No. 3681)—would have provided a comprehensive package of health care, benefit payments, and scientific review provisions to assist Vietnam veterans in ways that were reasonably related to current scientific knowledge in order to address the concerns about their exposure to Agent Orange. Despite the overwhelming Senate support for that Agent Orange legislation, the House of Representatives refused to accept all but a few provisions. The final version of the bill, which was enacted as Public Law 100–687 on November 18, contained only five, relatively minor Agent Orange provisions from the Senate-passed bill.

Background

Herbicide Use in Vietnam. Agent Orange was the military name for an herbicide used during the Vietnam War from 1962 to 1971. It was the most widely-used herbicide in Vietnam and consisted of a 50:50 mixture by weight of the n-butyl esters of two phenoxy acid herbicides, 2,4-dichlorophenoxyacetic acid (2,4-D) and 2,4,5-trichlorophenoxyacetic acid (2,4,5-T). A compound commonly referred to as "dioxin"—2,3,7,8-tetrachlorodibenzo-para-dioxin (TCDD)—was a

synthetic contaminant of 2,4,5-T. Levels of dioxin contamination of Agent Orange ranged from 0.02 to 47 parts per million, with a mean of about 2 parts per million.

The United States used herbicides in Vietnam primarily for defoliation, crop destruction, and, on a smaller scale, clearing vegetation around U.S. fire bases and other installations, around landing zones, and along lines of communication. The United States began using herbicides in Vietnam in 1962, substantially expanding their use from 1967 to 1969. In 1969, after a report by the National Institutes of Health that one of the components of Agent Orange—2,4,5-T—could cause birth defects in mice, the Government restricted the use of Agent Orange in Vietnam to areas remote from population. During 1970 and 1971, the use of herbicides was phased out in Vietnam.

The vast majority of the herbicides used in Vietnam were disseminated by aerial spraying through a military project, codenamed "Operation Ranch Hand", which utilized fixed-wing aircraft. The herbicides were sprayed at a rate of three gallons per acre. Much smaller amounts of the herbicides also were applied from helicopters, trucks, riverboats, and backpacks. Approximately 20 million gallons of herbicides were dispersed in Vietnam, including approximately 11 million gallons of Agent Orange. The greatest amount of Agent Orange spraying—approximately 5.3 million gallons—occurred in the III Corps area, the region of the country centering around Saigon. Since the defoliation caused by a single spray or series of sprays lasted many months, spraying was not constant, and two-thirds of all areas sprayed were sprayed only once; approximately 12 percent were sprayed more than two times.

Characteristics of Dioxin. Dioxin is not water soluble and thus is not readily absorbed by the body from drinking water containing it. Dioxin tends to remain stable for a long time in the environment, with virtually no leaching or biosynthesis in soils and virtually no uptake of it by plants. However, dioxin is highly susceptible to degradation by exposure to sunlight.

Committee Hearings. Beginning in the late 1970's, serious questions began to be raised regarding veterans' exposure to Agent Orange in Vietnam. These concerns fall into three general categories: Compensation for disabilities possibly related to exposure; answers to questions about the health effects of exposure to Agent Orange; and access to health care for current problems that might be related to the exposure. The Committee has held eight oversight hearings regarding these concerns, resulting in legislation—which was later enacted into law—designed to address them, as well as providing active oversight of the efforts of the VA and other Government agencies relating to the concerns of these veterans and their dependents and survivors.

The initial hearing was held on January 25, 1980, when the Committee began a series of five hearings on the readjustment of Vietnam-era veterans. Three of those hearings included significant emphasis on Agent Orange. The first two were field hearings held on January 25 in Chicago and on January 26 in Los Angeles, and a substantial portion of the testimony was from Vietnam veterans and their families. The third hearing, held on February 21 in Washington, D.C., included testimony from Government agencies

involved in both the conduct as well as the monitoring of activities pertaining to Agent Orange.

On September 10, 1980, the Committee held a hearing for purposes of receiving an update on the status of Agent Orange-related activities then being conducted by various Federal agencies, particularly activities bearing on the state of scientific knowledge about the long-term health effects in humans of exposure to dioxin as contained in Agent Orange. Representatives from veterans' organizations also presented testimony.

The Committee on November 18, 1981, held another oversight hearing on issues related to Agent Orange, stressing the Federal Government's efforts to determine the adverse health effects which may result from exposure to Agent Orange and other herbicides. The Committee particularly focused on the status of the protocol for the Agent Orange epidemiological study mandated by Public Law 96–151 (discussed below). Scientists and other representatives from various Government agencies, as well as others involved in the peer review of that protocol and representatives of veterans' organizations, testified at that hearing.

The Committee also held two hearings, on June 15 and 22, 1983, on the current state of scientific knowledge regarding the long-term health effects of exposure to Agent Orange, the status of ongoing Agent Orange-related studies, the availability of VA assistance for Agent Orange-exposed Vietnam veterans, and the appropriateness of the process by which the VA handles claims for compensation based on Agent Orange (and radiation) exposure. The Committee heard testimony from the same categories of witnesses that testified at the November 1981 hearing.

On May 12, 1988, the Committee held a 6½ hour hearing on Agent Orange-related oversight and legislation, receiving testimony on the state of science relating to Agent Orange exposure and the concerns of veterans who may have been so exposed in Vietnam. Scientists from the Centers for Disease Control (CDC), the Office of Technology Assessment (OTA), the Environmental Hazards Advisory Committee (EHAC), the Scientific Council of the Domestic Policy Agent Orange Working Group (AOWG), the Air Force, the National Cancer Institute (NCI), the Environmental Protection Agency, the Department of Agriculture, and the University of Rochester testified regarding numerous studies which have been conducted regarding the effects of exposure to Agent Orange, its by-product, dioxin, its component parts, and related phenoxy herbicides. Although many of the studies reassuringly have found no adverse human health effects, others have presented more troubling suggestions that Agent Orange may be associated with an increased risk of certain diseases in humans. The scientists generally concluded that, while serious concerns have been raised regarding a possible link between Agent Orange exposure and NHL, at that time the scientific evidence did not establish an association between Agent Orange exposure and any disease other than chloracne in humans. Representatives of veterans, Vietnam veterans, and Agent Orange organizations testified as to their concerns regarding Agent Orange exposure.

On June 22, 1989, the Committee held a legislative hearing on, among other things, S. 1153. In addition to hearing testimony on

the legislation from VA and veterans' organizations, the Committee received written testimony on Agent Orange issues from the National Academy of Sciences, the Surgeon General of the United States Air Force, CDC, and OTA.

Research Pertaining to the Human Health Effects of Agent Orange Exposure in Vietnam. A major focus of the Committee's efforts has been on research which might eventually lead to a greater understanding of the health effects of Agent Orange exposure and how best to address the special needs of those veterans who may have been exposed to this herbicide.

CDC Epidemiological Studies: In 1979, in response to concerns expressed regarding possible delayed adverse health effects as a result of exposure to Agent Orange, Congress enacted legislation—in section 307 of Public Law 96-151—which mandated that the VA conduct an epidemiological study of the possible health effects in Vietnam veterans of exposure to dioxin as found in herbicides used in Vietnam. The protocol for the study had to be approved by OTA. The scope of that study was expanded—by section 401 of Public Law 97-72—to authorize the inclusion of an evaluation of the impact on the health of Vietnam veterans of other environmental factors which may have occurred in Vietnam—that is, a "Vietnam experience" study. In 1983, the VA delegated to CDC the responsibility for this entire study.

CDC conducted the epidemiological study of the health of Vietnam veterans in three components. As mandated by Public Law 96-151, CDC's protocols for these studies were extensively reviewed in accordance with scientific peer-review criteria and were approved by OTA. In addition, these protocols were approved by the AOWG.

1. *Vietnam Experience Study (VES).* The VES was designed to demonstrate whether or not there is any difference in the health of veterans of the Vietnam era who served in Vietnam compared to the health of veterans who served elsewhere during the same period of time. The VES was comprised of a mortality study and a morbidity study.

a. *Mortality Study:* In January 1987, CDC released the results of its analysis of postservice mortality of over 18,000 Vietnam veterans and Vietnam-era veterans who did not serve in Vietnam. CDC found an excess of deaths—primarily due to external causes such as motor vehicle accidents and suicides—among Vietnam veterans in the first 5 years after service. However, after that period, except for drug-related deaths, the study found no increase in the death rate for Vietnam veterans as compared to their veteran counterparts who did not serve in Vietnam. This finding was similar to that found among veterans returning from combat areas after World War II and the Korean Conflict.

b. *Morbidity Study:* The morbidity study consisted of detailed telephone interviews of 15,288 Vietnam veterans and Vietnam-era veterans who did not serve in Vietnam and comprehensive medical and psychological examinations of a random subsample of 4,462 such veterans. The two groups of veterans were similar in demographic terms including level of education, employment, income, marital status, and satisfaction with personal relationships. Based on interim analyses of the VES data and on other related studies,

CDC added a birth outcome validation component and a semen analysis component to the morbidity study. The results from the morbidity study were released at the Committee's May 12, 1988, hearing on Agent Orange issues and published in three articles in the May 13, 1988, issue of *The Journal of the American Medical Association.*

CDC found that, despite a substantial increase in health problems reported by Vietnam veterans in telephone interviews, analysis of the hundreds of physical health items evaluated as part of the medical examinations revealed that there were few objective differences between the physical health of the two groups of veterans. In the telephone interviews, Vietnam veterans reported an increased prevalence of a number of medical problems including hypertension, chloracne and other skin conditions, liver conditions, and urinary problems, as well as overall "fair or poor health". However, these increases were not substantiated by the physical examinations, which indicated that the Vietnam veterans generally are as healthy as the non-Vietnam veterans.

CDC found that the "most noteworthy differences [which were verified upon physical examination of the two groups of veterans] were hearing loss, stool occult blood, evidence of past infection with hepatitis B, lower sperm concentrations, and lower average proportions of morphologically 'normal' sperm cells. Despite these last two findings, the average number of children fathered per veteran in each cohort . . . was identical—1.6 children." CDC also reported that, although Vietnam veterans reported more adverse reproductive and child health outcomes, examination of birth records revealed no significant difference between the two groups of veterans in the number of or the incidence of birth defects among their children.

The VES did not find an increase generally in cancer among the Vietnam veterans, but the study was not designed to detect increases in specific kinds of cancer. However, in its testimony for the Committee's May 12, 1988, hearing and in June 23, 1988, letters to the Chairman and Ranking Minority Member, CDC reviewed the VES data with respect to the incidence of NHL. CDC found seven cases (as compared to 3.9 expected cases) of NHL among Vietnam veterans. CDC stressed, however, that those numbers are too small to be meaningful in the study's population of 15,300 and could be the result of chance alone. OTA has expressed a similar view regarding the significance of these data

2. *Agent Orange Study.* CDC's Agent Orange Study was designed to determine if there are any differences in the health of veterans who were exposed to that herbicide during service in Vietnam compared to the health of veterans who also served in Vietnam but who were not so exposed. The implementation of this study depended on the development of a scientifically-valid Agent Orange exposure index based on information contained in military records to be used to assign the veteran to a particular study cohort. In late 1986, CDC refined a methodology for detecting residuals of dioxin in blood samples which, by establishing current body burdens of dioxin, could indicate past exposure to dioxin and thus, it was believed, could be used to validate a very intricate exposure-measurement methodology developed by the Defense Department in consul-

tation with CDC, based on military records. The blood-testing method of determining dioxin exposure has also been validated and used successfully in other studies, including studies of civilians and Ranch Hand Air Force personnel with known substantial exposures to dioxin.

CDC conducted a study to validate dioxin exposure predicted by both military records and self-reported exposure estimates. The results of CDC's Validation Study, first released in the July 24, 1987, issue of CDC's *Morbidity and Mortality Weekly Report* and later published in the September 2, 1988, issue of *The Journal of the American Medical Association (JAMA),* showed no association between serum dioxin levels and the exposure estimates. CDC found no significant dioxin exposure among the Vietnam veterans studied regardless of whether their military records or self-reported estimates indicated high, low, or intermediate exposure. Moreover, all except two of the Vietnam veteran participants had dioxin levels within normal background levels—that is, the upper limit for United States residents without known dioxin exposure.

OTA and the AOWG reviewed CDC blood dioxin study and both concluded that it was properly conducted and scientifically valid. They determined that the Agent Orange Study, at least as originally envisioned, could not be carried out. OTA concluded that "[t]here is no support for the rationale for a large-scale epidemiologic study" and "[t]here cannot be a general study of Agent Orange effects on ground troops." Similarly, Don M. Newman, Chair of the AOWG, in a November 3, 1987, letter to Chairman Cranston, stated that the "Agent Orange Exposure Study . . . has proved scientifically impossible to do." Those determinations by OTA and CDC were reconfirmed at the Committee's May 12, 1988, hearing.

3. *Selected Cancers (SC) Study.* The SC Study is a case-control study designed to determine whether there is an increase among Vietnam veterans in the incidence of several serious, but relatively rare, cancers—lymphoma (including NHL and Hodgkin's lymphoma), soft tissue sarcoma, and nasal, nasopharyngeal, and primary liver cancers—which have, in some studies, been suggested to be linked to dioxin exposure. This extremely powerful study (which has a 98-percent chance of detecting an increase as small as a doubling of risk of soft-tissue sarcoma and a 99-percent chance of detecting such an increase of NHL) is expected to provide the best answers we ever will have with respect to these cancers. CDC is in the process of data collection at this time, and the results of the SC Study are expected to be submitted to Congress in late March 1990.

CDC Birth Defects Study: Beginning in 1982, CDC began a study utilizing a comprehensive registry of birth defects in the Atlanta, Georgia, area, of Vietnam veterans' risks for fathering babies with birth defects. The general finding of this study, which was released by CDC in August 1984 and published in the August 17, 1984, issues of *The Journal of the American Medical Association (JAMA),* was that "Vietnam veterans in general are not at increased risk" of fathering a child with a serious birth defect. Although this finding was generally reassuring, the authors of the study also reported finding a higher estimated risk for fathering babies with certain birth defects for Vietnam veterans with higher likelihoods of expo-

19-632 0 - 89 - 3

sure to Agent Orange. Subsequent analysis by the AOWG and OTA of the results of this study led both groups to indicate that although the results as to the specified birth defects were "statistically significant", it did not appear that they should be a cause for serious concern among Vietnam veterans.

Ranch Hand (RH) Study: In 1979, the Air Force began an epidemiological study of Ranch Hand personnel, the Air Force personnel who participated in the Agent Orange spraying missions in Vietnam, to determine whether these individuals suffered adverse health effects from herbicide exposure. In the RH Study, the health of these personnel is being compared with that of counterparts who served in the Air Force in Southeast Asia and were not exposed to herbicides. Five mortality reports have been released thus far—the most recent in April 1989. None have indicated excess morbidity among the Ranch Hand personnel as a group, although the Air Force cautions that it is too early to draw any conclusions from these preliminary results. In October 1987, a report summarizing the results from the first follow-up examinations of the RH Study was released. The RH Study report concluded "that there is not significant plausible or consistent scientific evidence at this time to implicate a causal relationship between herbicide exposure and adverse health in the Ranch Hand group."

To date, according to the Air Force, none of these reports demonstrate any adverse health effects which can be conclusively attributed to dioxin exposure.

In February 1988, a report, entitled "United States Air Force Personnel and Exposure to Herbicide Orange", identified as an Interim Report for the period March 1984–February 1988 by Dr. Richard A. Albanese of the U.S. Air Force School of Aerospace Medicine, was released by the Air Force. Dr. Albanese compared "salient" findings of the first RH Study morbidity report published in 1984 with a dioxin toxicological profile which he developed from a review of scientific literature relating to the effects of dioxin exposure. Dr. Albanese had two principal differences with the 1984 Air Force report. First, in the area of birth defects, he concluded that minor birth defects cannot be assumed to account for an excess of reported birth defects—which the Air Force is in the process of verifying—as the earlier report had suggested. The Air Force generally agreed with this conclusion at the May 12, 1988, hearing and said that its next Ranch Hand report will contain an update in this area. Second, Dr. Albanese stated that a possible increase in cancers should not be assumed to be limited to skin cancers, as the 1984 report suggested. The Air Force disagreed with this conclusion. Dr. Albanese's report concluded that dioxin "cannot be confidently identified as the causative agent of these findings at this time" but that it also "is not exonerated as a causative agent".

At the request of the Senate and House Veterans' Affairs Committees, OTA, the AOWG, and the EHAC reviewed Dr. Albanese's report. OTA concluded that the "report by Dr. Albanese does not call into question any of the findings reported directly by the Air Force study team in their original reports. . . . Other than continuing to study this group [*i.e.,* the Ranch Handers], as is planned, and to use new technology to determine dioxin body burdens, the

reinterpretation does not suggest interventions of any kind or new directions for [the RH Study]."

The AOWG analysis of the report concluded that "[t]his paper appears to be intended as an expansion of the discussion section of the 1984 Ranch Hand 'baseline' morbidity report. . . . In summary, the five 'significant' morbidity measures mentioned by [Dr.] Albanese as being in excess among the Ranch Hand group are either undergoing validation (parent-reported birth defects) or are not supported by subsequent work."

The EHAC concluded that "the report is flawed in a number of ways." Most significantly, the EHAC found the report's failure to refer to more recent 1988 morbidity data was a serious shortcoming "because many of the trends observed in the 1984 data did not continue in the 1988 data. Therefore, many of the inferences derived from the 1984 data were incorrect when viewed in light of the 1988 data."

VA Proportional Mortality Study: The VA carried out a Proportionate Mortality Study of Army and Marine Corps Vietnam Veterans which examined the effect of service in Vietnam (not Agent Orange exposure). The results of this study, which were released in September 1987, have been published in the May 1988 *Journal of Occupational Medicine.* The VA compared causes of death among 24,235 Vietnam veterans with causes of death among 25,685 veterans of the Vietnam era who did not serve in Vietnam. The study found a statistically-significant two-fold increase of NHL and a statistically-significant 57 percent increase of lung cancer among the Marine Corps Vietnam veterans, who comprised approximately 20 percent of the Vietnam veterans in the study. However, there was a small, not statistically-significant deficit of NHL deaths and no increase in lung cancer deaths among the Army veterans, who comprised about 80 percent of the Vietnam veterans studied and no increase in either cause of death among all of the Vietnam veterans studied. As to all cancers and as to deaths in general, there was no marked difference between causes of death among Vietnam veterans as compared to the non-Vietnam veterans.

OTA, the AOWG, and the EHAC, in response to a request from the Committee, evaluated this study, with particular reference to whether it supports the suggestion in several studies of a link between NHL and dioxin exposure. Although all three groups concluded that the methodology of the study was sound, each expressed reservations about interpretation of the findings of excess NHL and lung cancer deaths. OTA stated that the finding of excess NHL deaths among the Marines had to be interpreted with caution because of the small number of cases involved (35 of 4,527 Marine Vietnam veterans). With respect to the excess lung cancer deaths found among the Marines, OTA noted that "cigarette smoking is the most obvious potential cause of the excess" and stated that it is "essential that smoking histories be obtained for these causes. . . ."

The AOWG, in its analysis of the Proportionate Mortality Study, stated that it "is not surprising to encounter the small number of statistical departures from expected mortality seen in this study. Some of these could have arisen by chance alone." The AOWG also emphasized the need for further information regarding smoking

histories among the Marines in order to interpret the excess lung cancer findings.

The EHAC concluded that "the findings concerning the non-Hodgkin's lymphoma and lung cancer, while statistically significant, should be interpreted with caution and are not conclusive. . . ."

In its report accompanying S. 2011 in the 100th Congress (S. Rept. 100–439, page 71), the Committee last September expressed its belief that the VA itself needs to examine additional questions arising out of the study, including, for example, the health status of Army Vietnam veterans who served in the I Corps area, the area in Vietnam where the majority of the Marine veterans served. The Committee there requested an evaluation from the VA regarding further investigation of conditions in I Corps, the region below the Demilitarized Zone. The Committee understands that approximately 2.3 million gallons of Agent Orange were sprayed in I Corps area as compared to 5.3 million gallons in the III Corps area but that factors such as troop dispersion, location, and spray patterns must also be carefully considered in any subsequent analysis. At the Committee's May 12, 1988, hearing, VA described several follow-up studies to the Proportionate Mortality Study which it has completed or currently is conducting. These studies include a review of the smoking histories to the extent indicated in the military medical records of the Marines who died from lung cancer, which the VA described in its testimony for the Committee's May 12, 1988, hearing as having been "not helpful".

Non-Veteran Herbicide Studies: In addition to studies of the effects of dioxin exposure on Vietnam veterans, other independent studies have examined the effects of herbicide exposure on agricultural, forestry, and industrial workers.

1. *Kansas Study.* In September 1986, the results of a study entitled "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma" (Kansas Study), conducted by the National Cancer Institute (NCI) and the University of Kansas, were published. (S.K. Hoar *et al.*, "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma," *The Journal of the American Medical Association,* 1141 (1986)). This study examined the effect of exposure to certain herbicides through years of direct contact from agricultural use, including any relationship with NHL. The components of some of the herbicides were also present in Agent Orange, but the herbicides were almost exclusively not contaminated with TCDD. The Kansas Study found a significant increase of NHL.

OTA and the AOWG reviewed this study and found it to be well-conducted and scientifically valid but both raised questions about the significance of the study results as far as Vietnam veterans were concerned. Both reviews noted that almost all of the herbicide exposure evaluated in the study consisted of exposure to 2,4-D, a phenoxy acid herbicide of which TCDD is *not* a contaminant, rather than to herbicides containing TCDD. Although 2,4-D is one of the components of Agent Orange, it does not persist in the environment. Thus, according to OTA, substantial exposure in Vietnam would have required either direct contact with Agent Orange or exposure very shortly after spraying. Accordingly, OTA observed, few Vietnam veterans would have been exposed to 2,4-D, and the re-

sults of the Kansas Study do "not provide strong support for attributing the occurrence of non-Hodgkin's lymphomas in Vietnam veterans to Agent Orange". Concerns also were expressed regarding the small number of cases on which the NHL findings were based.

The Chairman of the EHAC, Oliver Meadows, in a February 11, 1987, letter expressed similar concerns. The letter concluded that the "study's findings, while not directly applicable due to the differences in method and duration of exposure, did have implications for Vietnam veterans. The members of the EHAC did not believe that one study provided a sufficient foundation upon which to base firm conclusions."

2. *Western Washington Study.* A study entitled "Soft Tissue Sarcoma and Non-Hodgkin's Lymphoma in Relation to Phenoxy Herbicide and Chlorinated Phenol Exposure in Western Washington" which was published in the May 1987 issue of the *Journal of the National Cancer Institute,* investigated the relationship between the incidence of soft tissue sarcomas and NHL and past exposure to phenoxy herbicide and chlorinated phenol using a population-based case-control approach. This study found "small but significantly increased risks for developing NHL in association with some occupational activities involving exposure to phenoxy herbicides, particularly for prolonged periods, and possibly, in combination with other chemicals." The author of the study concluded, however, that overall the study did not demonstrate "a positive association between increased cancer risks and exposure to any specific phenoxy herbicide product alone."

The Senate and House Veterans' Affairs Committees asked OTA, the AOWG, and the EHAC to review this study and provide their views on its relevance to issues relating to Vietnam veterans. The EHAC noted in the Summary Minutes of its April 27–28, 1987, meeting that the study was well-designed and well-executed and that "this study adds to the accumulating evidence of no relationship with herbicide exposure and the occurrence of soft-tissue sarcoma" but that "[t]he association of phenoxy herbicide exposure with NHL warranted careful watching for new evidence".

The AOWG submitted as an enclosure to its January 20, 1988, letter, the AOWG's Science Panel's review of the study, which concluded that "the results of this study do not support an association between [soft tissue sarcoma] and NHL and occupational exposure to phenoxy herbicides or chlorophenols."

In a February 4, 1988, letter, OTA stated: "This study does not provide support for a hypothesized connection between Agent Orange and subsequent development of [soft tissue sarcoma] and provides very limited support for a connection with NHL."

Health care. As is discussed below in detail in connection with section 10 of the Committee bill, the Congress, beginning in 1981 with the enactment of section 102 of Public Law 97–72, has provided statutory access to VA health care for veterans exposed to Agent Orange during their service in Vietnam. That initial authority has been extended twice and, in section 10, is proposed to be extended a third time, to December 31, 1993.

Compensation Regulations. Public Law 98–542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984, enacted in October 1984, attempted to address the issue of

compensation for disabilities that might have resulted from exposure to Agent Orange in Vietnam. (A parallel provision in the law dealt with compensation for disabilities possibly resulting from ionizing radiation exposure.) That law provided for payment, during a two-year interim period from October 1, 1984, to September 30, 1986, of disability and death benefits for Vietnam veterans with chloracne and porphyria cutanea tarda which became manifest within one year after service in Vietnam and the survivors of veterans with such conditions. Only 41 veterans and survivors applied for benefits under this provision, and none of them were awarded.

Public Law 98–542 also directed VA, through a rule-making process allowing for public participation, to develop binding regulations for the adjudication of claims based on exposure to Agent Orange in order to bring about consistency in the process and the results. In developing the regulations, the Administrator was required to address specifically whether—based on medical and scientific evidence and resolving reasonable doubt in the claimant's favor—any presumptions as to service connection should be applied in the case of certain specified disabilities. The disabilities specified in the law in the case of Vietnam veterans were chloracne, porphyria cutanea tarda, and soft tissue sarcoma. These diseases were selected based on scientific information available at the time of the enactment, that supported a possible connection between them and Agent Orange exposure.

In addition to requiring the Administrator to determine which of the diseases specifically listed would have presumptions of service connection established for them, the law included a provision requiring the Administrator, during the initial rule-making process and as the science moved forward over the years—again, by regulation and based on medical and scientific evidence and resolving doubt in the claimant's favor—to add presumptions and standards, criteria, and guidelines for evaluating the claims of veterans seeking compensation for additional diseases which may result from exposure to Agent Orange or radiation.

The Committee and the Congress approached the compensation issue in Public Law 98–542 primarily by addressing the process by which the VA handles claims for veterans. The most important change needed in the compensation system identified by the Congress at the time that that legislation was under consideration was for VA to make clear, rational, on-the-record determinations, regarding the procedures and standards for handling radiation claims and to ensure that a consistent approach would be followed throughout VA—that is, at the 58 VA regional offices with their over 100 different rating boards, by the Department of Veterans Benefits in Washington, and by the VA's Board of Veterans Appeals. The Committee believed at the time the legislation was under consideration, and continues to believe, that the public—including, of course, those most directly affected, the veterans with claims for compensation based on exposure to Agent Orange or radiation and their survivors—should have a full opportunity to participate in the process of deciding how those claims should be handled and resolved. Public Law 98–542 was designed to help provide clear direction throughout the VA system on the resolution of Agent Orange and radiation claims.

The VA completed the process of developing and issuing the initial regulations required by Public Law 98–542 with the publication of final regulations on August 20, 1985. Although these regulations set forth a process for the adjudication of claims based on Agent Orange exposure, the VA elected not to provide compensation on a presumptive basis to Vietnam veterans for any of the diseases listed in that law, other than chloracne.

Public Law 98–542 also established the EHAC to evaluate scientific studies relating to the possible adverse health effects of exposure to dioxin and ionizing radiation and to submit to the Administrator periodic reports on such evaluations. The EHAC has met 9 times since its inception in 1984, and has issued 7 reports. In addition, the EHAC's dioxin panel has met separately once. The EHAC has recommended that VA presumptively service connect one disease on the basis of Agent Orange exposure—chloracne which appears within three months of the last date of service in Vietnam.

Most recently, on May 2, 1989, Judge Thelton Henderson of the United States District Court for the Northern District of California granted summary judgment in part to the plaintiffs in the case of *Nehmer, et al.* v. *United States Veterans' Administration, et al.*, an action in which plaintiffs had challenged VA's compliance with the requirements of Public Law 98–542.

The court held that VA had erred in two key ways in carrying out the requirement in Public Law 98–542 that VA issue regulations relating to the handling of claims for compensation based on exposure to Agent Orange—first, by utilizing too high a standard for determining if there is a linkage between exposure to Agent Orange and a subsequent manifestation of a disease and, second, by failing to give the benefit of the doubt to veterans in prescribing the standards in the regulations for VA to use in deciding whether to provide service connection for any specific disease.

VA Secretary Derwinski announced on May 11, 1989, that the Department was going to abide by the ruling and would begin the process of reissuing the Agent Orange regulations and reevaluating the relevant science. On July 18, 1989, VA published for comment proposed regulations designed to comply with the court's decision (54 Fed. Reg. 30099). Regardless of the final outcome of the regulation-issuing process, which Secretary Derwinski estimates will be completed by January of next year, the Committee believes that the Secretary's decision not to appeal the court decision shows a new VA sensitivity to the concerns of Vietnam veterans and should serve to give Vietnam veterans confidence that VA will do a fair and thorough job in attempting to come to grips with this very complex, very troubling legacy of the war in Vietnam.

With reference to the relationship between the VA's action in response to the court's ruling and the Committee's action on this measure, the Committee notes that it views this bill as complementary to VA's efforts. In the Committee's view, moving forward on this legislation provides an appropriate expression of Congressional commitment to finding a resolution to the concerns of so many Vietnam veterans and their families while Secretary Derwinski is moving forward within VA. The Committee sees the Executive Branch and Congress moving concurrently down compatible paths.

Moreover, the Committee notes that it is not clear what will be the outcome of VA's efforts, especially inasmuch as the SC Study will not be available until next year. This bill, if enacted, will provide interim relief to those Vietnam veterans who are suffering with either NHL or STS. The Committee does not view seeking a resolution of Agent Orange issues as something entrusted to the Executive Branch alone.

INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA AND CERTAIN SARCOMAS

Section 2 of the Committee bill would provide for the payment of interim benefits (from October 1, 1989, to April 15, 1992) disability benefits for Vietnam veterans with non-Hodgkin's lymphoma (NHL) and soft-tissue sarcoma (STS) (and survivors' benefits for deaths from either condition) and provide a mechanism for votes in both Houses after January 1, 1992, but prior to the expiration date of these interim benefits, to extend them or make them permanent. A similar provision was included as section 211 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

The disease about which the most uncertainty now exists regarding a possible association with Agent Orange or service in Vietnam is NHL. Although some studies have not found any association between NHL and Agent Orange or dioxin, the findings from three studies rather recently raise troubling concerns about a possible association between NHL and some risk factor—not necessarily Agent Orange—arising from service in Vietnam.

First, a study of agricultural exposure to herbicides among Kansas farmers conducted by the National Cancer Institute (NCI) and the University of Kansas found a six- to eight-fold increase in NHL among those with heavy exposure. The exposure in that study was not to dioxin, but to 2,4-D, a separate Agent Orange component not previously linked to NHL. In addition, the farmers, unlike Vietnam veterans, had experienced years of direct contact with herbicides. Because of these differences in exposure, the NCI and other scientists have suggested caution in extrapolating from those results to any finding that Vietnam veterans face an increased risk of NHL. Nevertheless, the association found in this study between NHL and one of the component parts of Agent Orange cannot be seen as reasurring.

Second, the VA Proportionate Mortality Study (which examined the effect of service in Vietnam, not Agent Orange exposure) found a two-fold increase in NHL among the subgroup of 4,000 Marines in the study. No increase in NHL was present among the total group of 25,000 Vietnam veterans or among a subgroup of 21,000 Army veterans. Moreover, the Marine increase was based on only a small number of excess deaths, and OTA and VA and other scientists have cautioned about overinterpretation of these results and called for further scrutiny of the data and the circumstances where the Marines served. Such scrutiny is ongoing. That these findings do not clearly establish an association between NHL and service in Vietnam—or service as a Marine in Vietnam—does not mean, how-

ever, that they can simply be dismissed. Rather, this study is another with troubling implications.

Third, the CDC's Vietnam Experience Study (VES)—a comprehensive study of the health effects of service in Vietnam—found 7 cases of NHL among Vietnam veterans but only 1 case among non-Vietnam veterans. Both the CDC and the OTA have stressed that those numbers are too small to be meaningful in the study's population of 15,300 and could be the result of chance alone. The CDC has specifically urged that the results "be interpreted cautiously", pointing out in a June 23, 1988, letter a number of reasons for this admonition. Especially in light of the other two studies, however, the data from the VES regarding NHL cannot be disregarded.

The relationship between exposure to dioxin and soft-tissue sarcoma is less well developed than that involving NHL. A linkage between exposure to dioxin and STS was first suggested in case-control studies carried out by Hardell and colleagues in Sweden in the late 1970s. These studies, of Swedish forestry and agricultural workers who sprayed herbicides containing dioxin that suggested that these workers were at greater risk of developing soft-tissue sarcomas, are generally viewed as well designed and conducted and thus a basis for concern about a linkage between STS and dioxin exposure. However, other than some suggestive findings in two State studies—a 1986 study by the West Virginia Health Department and a 1988 study in Massachusetts—there has been little additional basis for linking STS and dioxin exposure, and the studies that are suggestive about NHL show no STS excesses. Nevertheless, as one of the cancers that is the focus of CDC's SC study (discussed earlier and below) STS remains a matter of concern to many Vietnam veterans.

The Committee does not believe that the scientific knowledge currently available provides conclusive evidence as to whether NHL or STS are associated with service in Vietnam. However, the CDC, through its SC Study—the largest study ever done on NHL and STS, the results of which are due to be available by late March 1990—is evaluating whether Vietnam veterans are at risk of suffering these two, and three others (nasal, nasopharyngeal, and primary liver cancers), cancers because of their Vietnam service, including any Agent Orange exposure. This extremely powerful study (which has a 98-percent chance of detecting an increase as small as a doubling of risk for soft-tissue sarcoma and a 99-percent chance of detecting such an increase for NHL) is expected to provide the best answers we ever have with respect to these cancers.

Committee bill

The issue which the Committee is facing, then, is whether, in light of several significant studies—all with scientifically valid methodology and highly qualified investigators—which do raise suspicions regarding an association between NHL and Vietnam service as well as the studies suggesting linkage between STS and dioxin exposure, Vietnam veterans should be asked to wait another year or longer until the SC Study is completed and fully analyzed for the compensation issue to be resolved. The Committee, by its action on this legislation, has indicated its conclusion that the answer is "No".

The VA benefits system is unique among Federal benefits systems in that its benefits are earned through service to and sacrifice in defense of our Nation. We, as a Nation, are not giving veterans benefits out of charity; rather, VA benefits were paid for the hard way—by the veterans themselves. For that reason, in adjudicating claims for VA benefits, the VA is required to give veterans the benefit of reasonable doubt when there is an approximate balance of positive and negative evidence regarding the merits of issues material to the determination of a veteran's claim. In the Committee's view, with respect to NHL and STS, pending the results of the SC Study, such a reasonable doubt has been raied. Once the SC Study results are available and have been analyzed, of course, the Committee and the Congress will be better able to decide whether NHL and STS or both should be permanently service-connected for Vietnam veterans. Indeed, this will be the end point of the process to be established pursuant to section 4 of the Committee bill (discussed below).

Under the Committee bill, interim disability benefits—equal to VA service-connected disability compensation and dependency and indemnity compensation benefits would be paid to Vietnam veterans with NHL and STS and to survivors of veterans who have died from either condition. These benefits would be paid during the period beginning on October 1, 1989, and ending April 15, 1992. The Committee believes that this period will be more than sufficient to allow for the results of the SC Study to be received and analyzed as provided for in section 4 of the bill.

By virtue of a cross-reference in the Committee bill to section 3010(g) of title 38, if a veteran or a survivor applies for benefits under this interim authority within one year of the effective date of this provision—that is, by October 1, 1990—and benefits are awarded, such benefits would be paid retroactive to October 1, 1989.

No benefits would be paid under the temporary presumption after the interim period ends. The Congressional Budget Office estimates that the total outlay cost of these temporary benefits during the interim period of 30 and one half months would be approximately $96 million, with $33 million in outlays and $36 million in budget authority in fiscal year 1990.

VA would be required to take reasonable steps within 30 days of the date of enactment of this measure to publicize the availability of the interim benefits and to contact veterans who had previously applied for compensation for NHL or STS. In addition, to make clear the interim nature of these benefits, the Committee bill would require VA to provide notice with at least three montly interim benefit payments—the first, last, and one approximately in the middle of the interim period—which sets forth the April 15, 1992, date of expiration of the authority to pay the interim benefits.

The Committee bill would also provide a mechanism for votes in both Houses after January 1, 1992, but prior to the expiration date of these interim benefits to extend them by at least one year or make them permanent. This mechanism, which is modeled on the provisions in Public Law 100-526, the Department of Defense Base Closure legislation, sets forth a timetable under which a resolution

introduced after January 1, 1992, would receive expedited consideration in both Houses following referral to and consideration by the appropriate Veterans' Affairs Committee. The Veterans' Affairs Committees would have to act on any such resolution within a 60-day period following referral and could not amend the resolution. In each House, therefore, any one member could, under this provision, bring about a vote on a resolution to extend the interim benefits for a year or more. Similarly, such a vote could be brought about, in addition to or alternatively, on a resolution to make the interim benefits permanent.

With reference to the limit on Committee amendments, the Committee notes that it is aware of Senate precedent (see, for example, proceedings in connection with S.J. Res. 92 in the 100th Congress on page S4434 of the *Congressional Record* for April 2, 1987) which provides that, when a measure is considered under a statute which precludes amendments, the Presiding Officer must, on its own initiative, rule out of order all amendments, even those reported by a committee to which the measure was referred. Although this precedent would apparently apply to any resolution under this provision, the Committee bill specifically provides that any such amendment would not be considered in either body.

PRESUMPTION OF SERVICE CONNECTION FOR CHLORACNE

Section 3 of the Committee bill would amend section 312 of title 38 to establish a presumption of service connection for chloracne for Vietnam veterans where it or another acneform skin disease consistent with chloracne appeared within one year after service in Vietnam. A substantially identical provision was included as section 212 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

Scientific evidence has established a clear association between chloracne—a severe form of acne—and the dioxin contaminant present in Agent Orange. Stuides of substantial occupational exposure to dioxin over extended periods of time as well as of victims exposed through explosions, spills, and other types of accidents have demonstrated a consistent causal connection between chloracne and dioxin exposure.

Cases of chloracne have been reported after explosions at factories in Nitro, West Virginia, in 1949 and in Seveso, Italy, in 1976 and other locations. Chloracne also has developed as a result of occupational exposures in many countries where explosions were not involved, including the United States, West Germany, France, the U.S.S.R., and Czechoslovakia. Similarly, two scientists who were exposed during experimental synthesis of TCDD developed chloracne.

Although chloracne can develop within days of exposure, it also may not appear for several months. Recurrence of chloracne has been reported as long as 30 years after exposure; chloracne can vary substantially in its level of severity. (See, *e.g.,* Michael Gough, *Dioxin, Agent Orange* (New York and London: Plenum Press, 1986) pp. 29, 161, 162, 186; Marshall Sittig, *Handbook of Toxic and Haz-*

ardous Chemicals, (Park Ridge, New Jersey: Noyes Publications, 1981) p. 5.)

Chloracne can be mistaken for other skin diseases and thus can be difficult to diagnose, especially if dioxin exposure is not suspected. Health-care personnel in Vietnam were not specially trained to diagnose chloracne and thus may not have recognized it as such.

Public Law 98–542 provided for the award of presumptive benefits during a 2-year interim period which ended on September 30, 1986, to Vietnam veterans with chloracne which was manifested within one year of service in Vietnam. In 1985, VA amended its regulations to provide for the presumptive service connection of chloracne which was manifested within 3 months of service in Vietnam (38 C.F.R. 311a).

Committee bill

The Committee recognizes the difficulty that may exist in diagnosing chloracne. Therefore, the Committee bill would establish a presumption—rebuttable as are other presumptions of service connection in chapter 11 of title 38—of service connection for chloracne where chloracne, or any other acneform skin disease that is consistent with chloracne—and thus which might have been chloracne that was not correctly so diagnosed—appeared within one year after the veteran's service in Vietnam. The Committee intends that the Secretary interpret this provision to allow presumptive service connection when an acneform skin disease which would not be inconsistent with the symptoms or diagnosis of chloracne appeared within one year of service in Vietnam. The Committee believes that a one-year period would be consistent with other statutory presumptions and is appropriate in light of the scientific evidence that chloracne is not always manifested immediately after exposure to dioxin.

PRESUMPTION OF SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN HERBICIDE AGENTS

Section 4 of the Committee bill would create a mechanism pursuant to which VA must determine, based on an initial independent scientific review (as updated by biennial follow-up reviews) of all relevant evidence and on all other available scientific information, whether permanent presumptions for disability benefits should be accorded for non-Hodgkin's lymphoma (NHL), soft-tissue sarcoma (STS), or any other disease that is determined to have positive association with exposure to Agent Orange or other herbicides in Vietnam. The bill would provide that the National Academy of Sciences (NAS) would conduct this scientific review, unless NAS declines in which case another independent scientific entity would carry out the review. A comparable provision was included as section 214 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

As noted above under "Background", numerous studies have been conducted relevant to the human health effects of exposure to Agent Orange. In many respects, the results of those studies have

been contradictory and inconclusive. A number of reviews of the scientific literature on the effects of exposure to dioxin have been carried under contract with VA and published by VA pursuant to the mandate in Public Law 96-151 that VA conduct "a comprehensive review and scientific analysis" of the scientific literature on Agent Orange and other herbicides. The most recent such review update was published in May 1987. General acceptance of these reviews has been impaired because of a concern that VA may have exerted some influence on their content. Although the Committee does not share such a concern, it nevertheless recognizes that the perception of a possibility of some taint does exist and cannot be dismissed out of hand. Other than these reviews, the Committee is unaware of any other unified analysis of the results obtained from studies on the effects of dioxin exposure or of any up-to-date analysis.

As was also discussed under "Background", the Congress previously addressed in 1984 in Public Law 98-542 the issue of compensation for disabilities that may be related to exposure to Agent Orange. Under that law, VA, through a rule-making process allowing for public participation, was mandated to develop binding regulations for the adjudication of claims based on exposure to Agent Orange in order to bring about consistency in the process and the results. In developing the regulations, VA was required to address specifically whether—based on medical and scientific evidence and resolving reasonable doubt in the claimant's favor—any presumptions as to service connection should be applied in the case of certain specified disabilities. The disabilities specified in the law in the case of Vietnam veterans were chloracne, porphyria cutanea tarda, and STS. These diseases were selected based on scientific information available, at the time of the enactment in 1984, that supported a possible connection between them and Agent Orange exposure.

In addition to requiring VA to determine which of the diseases specifically listed would have presumptions of service connection established for them, that law included a provision requiring VA, during the initial rule-making process and as the science moved forward over the years—again, by regulation and based on medical and scientific evidence and resolving doubt in the claimants' favor—to add presumptions and standards, criteria, and guidelines for evaluating the claims of veterans seeking compensation for any additional diseases found to be linked to exposure to Agent Orange and radiation.

VA completed the process of developing and issuing the initial regulations required by Public Law 98-542 with the publication of final regulations on August 20, 1985. Although these regulations set forth a process for the adjudication of claims based on Agent Orange exposure, VA elected not to provide compensation on a presumptive basis to Vietnam veterans for any diseases listed in that law other than chloracne arising within 3 months after leaving Vietnam. Service-connected status has been awarded based on this presumption in five such cases with three rated above zero percent.

As was discussed under "Background", a Federal District court in California, on May 2, 1989, held that VA had erred in two key ways in carrying out the Public Law 98-542 regualtion-issuing re-

quirement. The court held that VA had utilized too high a standard for determining if there is a linkage between exposure to Agent Orange and a subsequent manifestation of a disease and also had failed to give the benefit of the doubt to veterans in making decisions on the content of the regulations. With specific reference to the standard to be applied to determine service connection, the court found that VA had required a showing of a cause-and-effect relationship when the appropriate standard was a showing a statistical association between exposure and any particular disease.

On May 11, 1989, Secretary Derwinski announced that the Department was going to abide by the ruling, and VA issued for comment proposed regulations on July 18, 1989 (54 Fed. Reg. 30099), which are designed to carry out the court's decision. The VA timetable calls for publication of final regulations setting forth the criteria for the review of the scientific evidence by October 1, 1989, and completion of the rereview of this evidence with decisions based on that rereview by January 1990.

Committee bill

Although the Committee is pleased that VA is proceeding to carry out a rereview of the scientific evidence as part of this effort to comply with the mandate of Public Law 98-542—and indeed, looks forward to the end result of that process—there is a strong sense that what is needed at this point is a review, by an entity completely independent of VA, that will yield unified compilation and analysis of the results from the various scientific studies.

In order to accomplish this result, the Committee bill would provide for an independent contract scientific organization—the National Academy of Sciences unless NAS is unwilling to undertake this effort—to undertake a comprehensive review and evaluation of all of the scientific evidence, literature, and studies—including the Selected Cancers (SC) Study being carried out by CDC—pertaining to the adverse health effects in humans or other animals of exposure to dioxin and other substances in herbicides used in Vietnam.

The contract scientific organization would be required to determine, with respect to each herbicide used in Vietnam, which diseases, if any, have positive association, limited positive association, or insubstantial association with the biological effects of exposure to any herbicide (including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects). "Positive association"—the relationship which has most importance under the bill—is defined as meaning that the credible evidence for the association between a disease and the biological effects of exposure to a particular herbicide is equal to or outweighs the credible evidence against such an association. The Committee notes that the reference to "equal to" effectively affords to veterans the benefit of reasonable doubt called for in Public Law 98-542 as construed by the court in the *Nehmer* case discussed above. In connection with making this determination of association, the contract scientific organization would have to discuss the biological basis for the association and provide estimations of the statistical significance of the association and of the relative risk for such disease in Vietnam veterans who were exposed to the herbicide in question during their

Vietnam service. The organization would have to determine specifically whether there is positive, limited positive, or insubstantial association between exposure to herbicides in Vietnam and NHL, STS, lung cancer, and each other cancer.

If the contract scientific organization determines that a disease has positive association with the biological effects of exposure to a particular herbicide in Vietnam, the organization would be further required to determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent in Vietnam was exposed under circumstances necessary to yield such biological effects. In the Committee's view, this last requirement would translate a theoretical, academic determination—whether exposure to any particular herbicide agent which was used in Vietnam *could* result in some health effect—into a practical finding which can serve as the basis for a decision relating to compensation benefits: Namely, was any Vietnam veteran exposed to the herbicide in question in a way that would yield the health effect?

The contract scientific organization would be required to submit a report to the Secretary of Veterans Affairs and the two Veterans' Affairs Committees on this initial review and evaluation of the scientific evidence 60 days after the organization obtains a copy of the SC study report or one year after the date of enactment of this measure, whichever is later.

Not later than 60 days after receiving the first report from the contract scientific organization, the Secretary, based on that report and other appropriate scientific information, would determine whether there is positive association between any disease and exposure to herbicides in Vietnam and issue proposed regulations listing each such disease and specifying the herbicide. Not later than 60 days thereafter, the Secretary would be required to issue final regulations.

VA would be required to update the intital regulations, utilizing the views of a contract scientific organization, no less often than every two years with an identical timetable required for determinations and promulgation of any regulations required.

If the authority to pay interim benefits under section 2 of this measure expires before VA issues the initial final regulations under this section, the Committee bill would require the Secretary to issue emergency regulations under which veterans or survivors who were receiving interim benefits—that is, for NHL or STS—would thereafter receive benefits under chapter 11 or 13 of title 38 for these diseases if either or both is listed by VA in the proposed regulations.

RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM

Section 5 of the Committee bill would require VA to comple, analyze, and submit annual reports to the Senate and House Veterans' Affairs Committees on all clinical data, obtained through VA examinations and treatment of Vietnam veterans pursuant to the Agent Orange-exposure health-care eligibility, that are likely to be

scientifically useful in determining the health effects of service or exposure to dioxin or other known toxic agents in Vietnam. The VA would have to consult with the Office of Technology Assessment before beginning such compilation and analysis. A substantially identical provision was included as section 215 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

As is discussed below in detail in connection with section 10 of the Committee bill, the Congress, beginning in 1981, has provided statutory access to VA health care for veterans possibly exposed to Agent Orange during their service in Vietnam. That initial authority has been extended twice and, in section 10 of the Committee bill, is proposed to be extended a third time, to December 31, 1993.

In addition to providing care, VA, as part of an ongoing effort which was begun in 1979, has provided physical examinations to Vietnam veterans who have come to VA with concern about the possible consequences of their exposure to hazardous substances during their service in Vietnam.

VA reports that, as of June 1989, approximately 236,000 veterans have been examined in connection with their being placed in VA's Agent Orange Registry. VA further reports that approximately 30,000 episodes of inpatient care and approximately 1.8 million episodes of outpatient care have been provided to Vietnam veterans under the statutory health-care authority.

Committee bill

Because the Committee believes that all available data sources should be utilized in the ongoing effort to find scientifically valid answers to the many questions about Vietnam veterans' exposure to Agent Orange or other toxic substances in Vietnam and about the general effects of service in Vietnam, the Committee bill would require VA to compile, analyze, and submit annual reports to the Senate and House Veterans' Affairs Committees on all clinical data, obtained through VA examinations and treatment of Vietnam veterans pursuant to the Agent Orange-exposure health-care eligibility, that are likely to be scientifically useful in determining the health effects of service or exposure to dioxin or other known toxic agents in Vietnam.

The Committee notes that VA, in testimony before the Committee in May 1988, stated that "VA currently monitors these data [generated by Vietnam veterans seeking health care from VA] as well as those generated by the Agent Orange Registry program" and that VA went on to caution "against over-interpretation of this data primarily because it may not be representative of the Vietnam veteran population." The Committee understands, as VA indicated, that such data are "only descriptive of those self-selected individuals who for a variety of reasons sought either health care or a physical examination from the VA" and that, as a result, some of the clinical data obtained through such examination and treatment is unlikely to be subject to evaluation in a scientifically-valid way; other such data, however, may well be scientifically useful and should be pursued for such purposes. In this regard, the Committee

notes that the Committee bill requires the compilation and analysis of clinical data that are "likely to be scientifically useful" in determining the association, if any, between Vietnam veterans disabilities "and exposure to dioxin or any other toxic substance" during Vietnam service or between such disabilities and Service in Vietnam generally. The VA would be required to consult with OTA before beginning any such compilation and analysis in order to provide assurance that the compilation and analysis process was designed in such a way as to provide scientifically valid results.

TISSUE ARCHIVING SYSTEM

Section 6 of the Committee bill would require the VA, in consultation with the OTA, to establish and maintain a blood and tissue archive of sufficient numbers of voluntarily-donated samples from Vietnam veterans to facilitate research on the health effects of exposure to Agent Orange or service in Vietnam. The Committee strongly urges the Secretary to evaluate utilization of the NAS' Medical Follow-up Agency in connection with establishing such an archive. A substantially identical provision was included as section 216 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4714.

Background

In carrying out epidemiological research, determining a dose-response relationship is a vital element in any effort to reach conclusions about possible causal relationships between exposure to a particular substance and a subsequent manifestation of a disease. To date, developing accurate exposure assessment has proven to be one of the most elusive aspects of Federal studies of the possible health effects of exposure to dioxin.

In recent years, technological advance have made possible the detection of dioxin in minute quantities in blood, fat, and other tissue. Blood and tissue analysis has been utilized in various studies relating to Agent Orange, including ones conducted by CDC, the Air Force, and State Agent Orange studies in New Jersey and Massachusetts.

The Committee understands that the New Jersey Agent Orange Commission, in anticipation of further research and at the request of individual veterans, has begun to store small quantities of blood and tissue samples from Vietnam veterans. However, the Committee further understands that the capacity of the New Jersey Commission in limited and it is unable to meet the many requests for sample storage that it has received or the demand that would be created in connection with any large-scale study looking into dioxin levels in blood or tissue.

Committee bill

Recognizing that a national tissue archive, established either in one location or in several regional locations, could allow for the collection and storage of blood and tissue samples from veterans potentially exposed to dioxin and could facilitate further research in this area, the Committee bill requires VA to establish and maintain such a system, either directly or by contract.

The Secretary would be required to ensure that the material is collected and stored under physically secure conditions and in a manner that maintains its usefulness for future research. The Secretary would be authorized to prescribe such limitations as the Secretary considers appropriate on the acceptance and storage of blood and tissue—including, of course, placing limitations on the total amounts of such materials that would be accepted.

In order to provide assurance that the archiving would be carried out in a scientifically valid manner, the Committee bill would require the Secretary to consult with the National Academy of Sciences or, if NAS does not enter into an agreement to provide such consultation, with the Director of OTA, on the establishment and maintenance of the archiving system.

SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM

Section 7 of the Committee bill would require VA to carry out a program under which it would, to the extent provided in appropriation acts, award contracts or grants to scientifically-qualified non-Government entities to carry out scientifically-valid studies on the feasibility of conducting additional scientific research on health hazards resulting from exposure to dioxin, from exposure to other toxic agents in herbicides used in Vietnam, and from service in Vietnam generally. A substantially identical provision was included as section 217 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

As is discussed under "Background", Congress, in section 307 of Public Law 96–151 mandated that comprehensive epidemiological study of the effects of exposure to Agent Orange in Vietnam be conducted. The implementation of this study depended on the development of a scientifically-valid Agent Orange exposure index. The CDC and Environmental Support Group in the Defense Department and others spent several years attempting to devise such an exposure index, but CDC concluded—after conducting a substudy utilizing a methodology for detecting residuals of dioxin in blood—that such an Agent Orange study could not be conducted. Based on that conclusion, the Executive Branch, through the Chairman of the Agent Orange Working Group, the Under Secretary of Health and Human Services Don Newman, in a November 3, 1987, letter to Chairman Cranston, decided that no Agent Orange exposure study would be done.

Although OTA agreed with CDC that the study could not go forward, there has been much criticism of the CDC and much frustration over the inability to complete the mandated Agent Orange study. Some scientific sources and advocacy groups have suggested that such a study is possible and have urged that consideration be given to proceeding, notwithstanding CDC's conclusion.

Committee bill

In light of the continuing controversy over the Federal Government's involvement in Agent Orange-related research, some have suggested that the government might fund independent pilot stud-

ies by entities outside of the Federal Government to determine the feasibility of further research on the possible health effects of either exposure to Agent Orange or Vietnam service. Such investigator-initiated pilot studies would offer the government a way to fund consideration of further research without direct involvement, thereby avoiding any appearance of bias in the conduct of the research.

In response to these views, the Committee bill would require VA to award contracts or provide grants to qualified individuals and entities which have developed scientifically-valid protocols for studies on the feasibility of conducting an Agent Orange study.

The Secretary, in awarding contracts or grants, would have to prescribe and adhere to criteria regarding the selection of entities to receive such assistance and the approval of the proposals for studies to be conducted. The Committee expects that generally-accepted scientific criteria for the assessment of proposals for such studies would be applicable. In order to provide assurance of a scientifically-valid process, the NAS, to the extent provided by contract, would be required to review such program and studies funded under it.

VA OUTREACH SERVICES

Section 8 of the Committee bill would amend section 1204 of Public Law 100–687, which required VA to conduct an outreach program to keep Vietnam veterans informed about the possible health risks of exposure to dioxin or other toxic agents in herbicides used in Vietnam and about services and benefits available to these veterans in connection with such health risks, so as to require VA annually to update such Agent Orange-related information and to provide such information to veterans whose names are in VA's Agent Orange Registry.

Background

Section 1204 of Public Law 100–687, which was signed into law on November 18, 1988, requires VA to carry out an outreach program so as to keep Vietnam veterans informed of new developments regarding the health effects of service in Vietnam and the benefits and services available to those veterans with respect to any such health risks. The VA also is required to reorganize the Agent Orange Registry—first established by VA in 1979 to identify and keep track of veterans concerned about the health effects of exposure to Agent Orange—and keep it updated, so that it can be used to facilitate appropriate outreach efforts to veterans concerned about their exposure to Agent Orange.

Committee bill

The Committee bill would amend section 1204(a) of Public Law 100–687 so as to require VA (1) to furnish to all individuals whose names are listed in the Agency Orange Registry current information about the possible health risks of exposure to dioxin or other toxic agents in herbicides used in Vietnam and about services and benefits available to these veterans in connection with such health

risks and (2) to furnish updated versions of such information on an annual basis.

REPORT RELATING TO RESEARCH ON TREATEMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS

Section 9 of the Committee bill would require the Secretary of Health and Human Services to report to the Congress 6 months after the date of enactment on research being conducted regarding potential treatments for exposure to dioxin and other toxic agents similar to those in herbicides used in Vietnam. A substantially identical provision was included as section 219 of the substitute amendment passed by the Senate on October 18, 1988, in H.R. 4741.

Background

In addition to research to determine the possible health effects of exposure to dioxin, there is an interest among Vietnam veterans in efforts to remove dioxin from body tissues and thereby to attempt to prevent potentially negative health effects of exposure.

The Committee has been advised that there is ongoing private research in this area and that several studies have reported reductions in the body burden of dioxin and other related compounds.

Committee bill

In order to learn more about this area of research, the Committee bill would require the Secretary of HHS to report to the two Veterans Affairs Committees, within 180 days of the date of enactment of this measure, on the research that is being carried out to identify and develop treatments for the absorption of dioxin.

EXTENSON OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR RADIATION EXPOSURE

Section 10 of the Committee bill would amend section 610(a)(1)(G) of title 38 to extend, by 36 months, from December 31, 1990, to December 31, 1993, VA health-care entitlement/eligibility for Vietnam veterans who may have been exposed to dioxin (and for certain ionizing radiation-exposed veterans).

Background

In 1981, the Congress enacted legislation—Public Law 97–72—to expand eligibility for VA health-care services to veterans exposed to Agent Orange in Vietnam. Public Law 97–72 also made VA health care available to veterans exposed to radiation from their participation in the nuclear weapons testing program or the American occupation of Japan, on similar conditions as for Agent Orange exposure.

The practical effect of the enactment of this provision was to provide Vietnam veterans suffering from disabilities that they believe may be linked to their exposure to Agent Orange—but as to which there is sufficient medical evidence at the time they apply for care for such disabilities to establish this linkage—with eligibility to receive basic VA health-care services for those disabilities without having to meet other eligibility criteria.

The health-care services for which eligibility was provided included inpatient care in VA facilities for the disability in question and outpatient or ambulatory care in VA facilities for the disability on a pre- or post-hospitalization basis or as necessary to obviate the need for such hospitalization. Providing this health-care eligibility, in addition to its direct value as a benefit, also demonstrated to Agent Orange-exposed Vietnam veterans the Congress' commitment to provide concrete assistance to those suffering health problems that may eventually be found to be related to their service while efforts proceed to determine if the disabilities are actually or probably so related.

The provision that provided eligibility for health care was worded in such a way as to indicate that the information needed finally to resolve questions of service connection is not and may not ever be available in many cases: "notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure".

Public Law 97-72 established health-care eligibility for all disabilities except those that are determined to result from some cause other than the exposure in question. VA's Chief Medical Director was required to issue guideline pursuant to which a disability may be found by an examining physician to have resulted from a cause other than the radiation exposure.

The Congress was satisfied that, as to some disabilities, such as traumatic injuries and infectious diseases—influenza, for example—valid medical judgments can be made that a particular disability is the result of a specific cause other than the exposure. In recognition of the scientific uncertainties regarding the amount of Agent Orange exposure to Vietnam veterans and the potential adverse human health effects of such exposure, however, the legislative language puts the burden on VA to establish that a disability was not caused by Agent Orange exposure, instead of placing it on the Vietnam veteran to show that the disability was caused by Agent Orange exposure.

Unfortunately, the VA initially elected to construe this authority very narrowly, listing diseases that were eligible for treatment, rather than those as to which there was no eligibility. It was not until April 1983—17 months after the law was enacted—that the agency advised the Committee that it was amending the implementing regulations so as "to allow treatment of all health conditions except for those known to have causes other than Agent Orange exposure", the standard articulated in the underlying law.

As originally enacted, Public Law 97-72 provided health-care eligibility for a limited period ending 1 year followig the VA's first submission providing results on the epidemiological study regarding veterans exposed to Agent Orange that was mandated by Public Law 96-151. These health-care benefits were "sunsetted"—like the health-care benefits provided for veterans exposed to radiation—in order to provide interim relief pending the results of ongoing scientific research pertinent to the service-connection of the disabilities in question.

The Secretary was required to submit the first report on the Public Law 96-151 Agent Orange-exposure epidemiological study of Vietnam veterans not later than 24 months after the study proto-

col was approved, an event which occurred on February 14, 1984. Thus, the first report on the study was due by February 14, 1986, and the health-care eligibility was scheduled to expire on February 14, 1987. When it later became clear that the major studies—the Public Law 96–151 study on Agent Orange and study mandated by Public Law 98–160 relating to radiation exposure—designed to yield the information necessary to make final decisions about eligibility for VA benefits, including health care, for veterans exposed to dioxin or radiation would not be sufficiently advanced by 1987, the Congress, in 1985, passed legislation, ultimately enacted as Public Law 99–166, extending the health-care eligibility until September 30, 1989.

In 1986, as part of general changes in the law relating to access to VA health care made by the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, this health-care eligibility was changed to direct, rather than merely permit, VA to furnish hospital care to both categories of veterans, while leaving access to outpatient care as an eligibility rather than an entitlement.

Last year, in recognition of the fact that information from various studies relating to the effects of exposure to Agent Orange was still forthcoming, the health-care entitlement/eligibility was extended, by section 1202 of Public Law 100–687, until December 31, 1990.

With reference to the impact of this authority on veterans who were exposed to radiation from nuclear blasts, the Congress last year enacted legislation, Public Law 100–321, which provides service-connected presumptions for veterans suffering from thirteen specified cancers. As to veterans with these cancers who are adjudicated as service connected pursuant to this new law, access to health care for those cancers is now guaranteed by virtue of their status as service-connected veterans. For other veterans who may have been exposed to ionizing radiation from nuclear detonations who have conditions other than the cancers specified in that law and who are seeking VA health care in connection with such conditions, this authority would continue to be important.

With further reference to efforts would relating to veterans exposed to radiation from nuclear detonations, the Committee notes that the Medical Follow-Up Agency of the National Academy of Sciences, pursuant to a contract with VA, is conducting a mortality follow-up study of veterans who were exposed to radiation at the Operation Crossroads nuclear test in the Pacific in 1946. This study, which VA undertook in response to the mandate in section 601 of Public Law 98–160, is scheduled to be completed by late 1990. Once this study is completed, the Committee and the Congress will have further information on which to evaluate whether there is any basis for amendments to the list of diseases for which service connection is provided for in Public Law 100–321.

The Committee notes that the July 18, 1989, proposed regulations pursuant to the *Nehmer* case would apply to nuclear-detonation radiation exposure as well as Agent Orange exposure.

Committee bill

The Committee believes that sufficient questions have been raised regarding the effects of human exposure to Agent Orange and exposure to low-level ionizing to radiation to warrant continuation of health-care eligibility for Vietnam veterans and nuclear-detonation, ionizing radiation-exposed veterans, until the CDC's Selected Cancers Study—now scheduled to be completed in March 1990—is completed and the results analyzed. Accordingly, section 10 of the Committee bill would extend the special VA health-care provisions for these veterans through December 31, 1993. Under current law, such health-care eligibility would terminate after December 31, 1990.

RANCH HAND STUDY AMENDMENTS

Section 11 of the Committee bill would amend section 1205 of Public Law 100-687, which made certain improvements to the so-called Ranch Hand Advisory Committee, to provide that the members of the Advisory Committee and the Air Force scientists conducting the Ranch Hand study may directly consult with one another and to provide additional reporting requirements from the Secretary of Defense to the two Veterans' Affairs Committees regarding the Ranch Hand Study.

Background

Section 1205 of Public Law 100-687 made certain improvements in connection with the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants—the so-called Ranch Hand Advisory Committee—the body which was established by the Executive Branch, specifically the Secretary of HHS, to monitor and provide advice regarding the conduct of the Air Force epidemiological study on veterans who participated in herbicide spraying missions in Vietnam (Operation Ranch Hand).

First, that section required, effective March 1, 1989, that at least one-third of the Ranch Hand study advisory committee be composed of qualified scientists nominated by veterans' organizations. Only scientists qualified by virtue of academic achievement and scientific experience would be eligible to serve on the Committee. The Ranch Hand study protocol contained such a one-third requirement, but it has not been met.

Second, also effective March 1, 1989, the new provisions provided that the chairman of the advisory committee could not be a Government scientist unless a non-Government scientist were not available.

Third, section 1205(c) required the Secretary of Defense, not later than 90 days after the date of enactment of that Act—that is, by February 16, 1989—to submit to the Senate and House Veterans' Affairs Committees a schedule of progress reports on the Ranch Hand study, which reports would then also have to be submitted to the Committees.

At present, the Secretary of Health and Human Services is making efforts to reorganize the Ranch Hand Advisory Committee so as to implement the first two changes described above made by

Public Law 100-682. The last Advisory Committee's charter expired in January 1989 and a new charter will not be prepared until the Committee is reorganized. The Secretary of Defense has not yet submitted a schedule of progress reports.

Committee bill

Because of concerns that the scientists carrying out the Ranch Hand Study may not have had the access to the Ranch Hand Advisory Committee that would promote a mutually beneficial level of communications between the two groups, the Committee bill would specify that members of the Advisory Committee and the scientists conducting the study may consult directly with each other and that no Federal officer or employee may interfere in such communications unless necessary to do so to protect national security matters.

In addition, the Committee bill would specify that the schedule that the Secretary of Defense is to submit relating to reports on the Ranch Hand Study is to provide for the submission of annual reports and for a final report on the Study. The Committee urges the Secretary of Defense to submit the schedule as soon as possible.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law) during the first 5 years following enactment would be $37 million in budget authority and $34 million in outlays in FY 1990; $54 million in budget authority and $52 million in outlays in FY 1991 $39 million in budget authority and $42 million in outlays in FY 1992; and $5 million in budget authority and $7 million in outlays in FY 1993. CBO estimates no cost associated with the Committee bill in FY 1994. The cost estimate provided by CBO, setting forth a detailed breakdown of the costs, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1989.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1153, the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989, as ordered reported by the Senate Committee on Veterans Affairs, July 13, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1153.

2. Bill title: Veterans Agent Orange Exposure and Vietnam Service Benefits Act of 1989.

3. Bill status: As reported by the Senate Committee on Veterans' Affairs, July 13, 1989.

4. Bill purpose: To establish a presumption of service-connection between certain diseases experienced by Vietnam Era veterans and exposure to toxic herbicides during their Vietnam service, to provide interim benefits to certain veterans incurring such diseases, and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1990	1991	1992	1993	1994
Direct spending:					
Budget authority	36	38	22	0	0
Outlays	33	38	25	0	0
Authorizations:					
Estimated authorization level	1	16	17	5	0
Outlays	1	14	17	7	0

The cost of this bill would fall in budget function 700.

Basis of Estimate.—The following section-by-section cost analysis addresses only those sections of the bill that would be expected to have a significant budgetary impact.

Section 2. This section would provide temporary disability and death benefits to veterans and the survivors of veterans who performed active-duty military service in Vietnam during the Vietnam Era and who contract non-Hodgkin's lymphoma or soft-tissue sarcoma. The language defines a soft-tissue sarcoma as any sarcoma other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma. The benefits provided by this section would be equal in amounts to those under the Disability Compensation or Dependency and Indemnity Compensation programs. Benefits under section 2, however, would be provided only from October 1, 1989 through April 15, 1992.

[By fiscal years, in millions of dollars]

	1990	1991	1992	1993	1994
Budget authority	36	38	22	0	0
Outlays	33	38	25	0	0

Approximately 2.4 million servicemembers served in the Republic of Vietnam during the Vietnam Era. Based on the survival to date of all Vietnam Era veterans, it is estimated that about 2.2 million of those veterans are still living.

The above estimate is based on data from the National Cancer Institute (NCI) regarding the normal incidence of non-Hodgkin's lymphoma and soft-tissue sarcoma (as defined by the bill) among

males aged 35–55. An incidence of 5.0 cases per 100,000 per year was used for soft-tissue sarcoma and 11.8 casts per 100,000 for non-Hodgkin's lymphoma. Yearly survival rates for those contracting the cancers were also supplied by NCI and used to estimate veteran beneficiary deaths and the likely number of survivor beneficiaries.

A VA study, "Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War" (Patricia Breslin and Others, Office of Environmental Epidemiology, VA, September 1987), found a statistically significant increase in mortality from non-Hodgkin's lymphoma among Marine Corps veterans who had served in Vietnam. While this may indicate a higher incidence of non-Hodgkin's lymphoma among veterans heavily exposed to Agent Orange, the study showed no statistically significant overall increase in lymphoma deaths when Army and Marine Corps veterans were viewed together. This cost estimate, therefore, is based on the normal incidence of non-Hodgkin's lymphoma in the general population of males aged 35–55.

Because there is even less conclusive evidence of an increased incidence of sarcomas among Vietnam-service veterans, the normal incidence of this disease was also used.

It was estimated that about 2,000 veteran and 2,400 survivor cases would be added to the compensation rolls by this provision in 1990, with approximately 300 new veteran cases and 200 new survivor cases acceding to the rolls in 1991. Fewer new cases would come on the rolls in 1992, because the payment of benefits would terminate on April 15, 1992. Veteran cases were assumed to receive benefits, on the average, equal to the disability compensation benefit for a 90 percent disability. Survivors were assumed to receive benefits equal to the average benefit payable to all current dependency and indemnity compensation cases.

Section 3. This section would establish a presumption of service-connection for the disease of chloracne in the case of veterans who served in Vietnam during the Vietnam Era. However, the disease must have become manifest to a 10 percent degree of disability or more within one year of the veteran's final departure from Vietnam in order to qualify for the presumption.

Most veterans with Agent Orange-related chloracne have already been awarded compensation benefits by the VA. The cost of any additional cases that would be generated by this provision, therefore, is not expected to be significant.

Section 4. This section would require the Secretary of Veterans Affairs to contract annually for surveys of scientific information regarding the relationship between Agent Orange exposure and the development of disease. Based on these surveys, the Secretary would prescribe regulations to establish a presumption of service-connection for any diseases of Vietnam-service veterans for which a positive relationship with Agent Orange exposure is found.

[By fiscal years, in millions of dollars]

	1990	1991	1992	1993	1994
Estimated authorization level	1	(1)	(1)	(1)	(1)
Outlays	1	(1)	(1)	(1)	(1)

[1] Less than $500,000.

The studies mandated by this section would involve comprehensive surveys of completed and ongoing scientific studies and any other scientific evidence of the effects of herbicide agents on humans and animals. All surveys after the first would be updates of the initial survey. The above estimate is based on the cost of similar studies: outlays are projected according to historical spending patterns.

There is no way of estimating in advance which, if any, diseases may be determined as a result of the surveys to be positively associated with Agent Orange exposure. This estimate, therefore, does not include any costs that may result from future extensions of compensation coverage to Agent Orange-exposed veterans.

Section 5. This section would require the VA to compile and analyze all clinical data obtained from examinations and treatment of Vietnam veterans for conditions that are suspected to be related to Agent Orange exposure.

The VA currently maintains in the Agent Orange registry clinical data from the initial and first follow-up examinations of all Vietnam-service veterans who are willing to participate in the registry. Under this provision, any further examinations or treatments after the first follow-up visit would have to be recorded as well. Adding this information to the registry should not have a significant cost.

Section 6. This section would require the VA to establish and maintain a system for the collection and storage of blood and tissue samples voluntarily contributed by veterans with Vietnam service. The specimens would be available for future scientific research on the health effects of dioxin and other toxic agents in herbicides used in Vietnam.

According to the Centers for Disease Control (CDC), the sterility requirements for obtaining blood and tissue samples from Agent Orange-exposed veterans would need to be extremely stringent, because such low concentrations of dioxin (a few parts per billion) are suspected of being potentially toxic. Therefore, acceptable samples could not be collected by a veteran's personnel physician or even by the average physician in a VA hospital, since they are not trained in the necessary procedures. The CDC recommends that one or two special facilities be established and maintained by the VA for the sole purpose of collecting and storing the specimens.

If the CDC's recommendations were followed, the number of voluntary contributions by veterans would probably be fairly small, because veterans would have to travel to the special facilities to donate samples. Assuming that 1,000–2,000 blood samples would be contributed over a five-year period to one or two repositories established in existing VA medical facilities, the cost of collecting and storing the samples should be less than $500,000 a year. If, howev-

er, a large number of veterans are willing to travel to the collection centers to donate samples, greater storage space would be needed than is assumed here. Under these circumstances, the cost could exceed $1 million a year. These estimates are based on the costs experienced by specimen repositories operated by the National Bureau of Standards, the NCI, and the CDC.

Section 10. This section would extend from September 30, 1990 to December 31, 1993, the authority of the VA to provide medical care to veterans for conditions related to exposure to Agent Orange or ionizing radiation during military service.

[By fiscal years, in millions of dollars]

	1990	1991	1992	1993	1994
Estimated authorization level	0	16	17	5	0
Outlays	0	14	17	7	0

During fiscal year 1988, the VA treated more than 130,000 veterans on an outpatient basis for conditions related to Agent Orange and radiation exposure, and nearly 300 veterans were treated on an inpatient basis. The above estimate assumes that the demand for care from this group would continue to grow slowly, according to historical trends.

Average cost data specific to the care of these veterans were not available from the VA. The cost of care was, therefore, assumed to be the same as the overall average cost for outpatient and short-term inpatient care in VA facilities. These costs were increased in the outyears for anticipated inflation.

6. Estimated cost to State and local government: The Congressional Budget Office has determined that the budgets of state and local governments would not be significantly affected by the enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: K.W. Shepard.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the provisions of the Committee bill. The Committee finds that the bill would not entail any significant regulation of individuals or businesses or result in any significant impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee announces that at the Committee's July 13, 1989, meeting, the Committee voted unanimously by voice

vote to report favorably to the Senate S. 1153 with an amendment in the nature of a substitute.

AGENCY REPORTS

STATEMENT OF ANTHONY J. PRINCIPI, DEPUTY SECRETARY, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, It is a pleasure to appear before this Committee today and present the views of the Department of Veterans Affairs (VA) on legislation affecting the loan guaranty program, in response to concerns about the health consequences of veteran's exposure to herbicides used in Vietnam and concerns expressed regarding the structure and operations of VA Security Services.

Agent Orange Issues

Mr. Chairman, last month Secretary Derwinski took a bold step towards settling the controversy over Agent Orange. Citing the interests of the veterans we serve, the Secretary announced that VA would not seek an appeal of a court's ruling that some VA regulations relating to Agent Orange had missed the mark intended by Congress.

In early May, Judge Thelton Henderson of the U.S. District Court in San Francisco said that VA had misinterpreted the will of Congress in enacting Public Law 98–542. Judge Henderson said that Congress did not intend that VA service connect diseases on the basis of cause and effect. He said that what Congress meant was that, if the weight of the evidence established a statistical correlation or if the evidence were evenly balanced, VA should service connect the diseases.

VA has a lot invested in its efforts, Mr. Chairman. We have been working with the Advisory Committee for more than 4 years, trying to follow the Congressional mandate that VA perform the fact-finding and make the decisions about Agent Orange. We have already performed what Judge Henderson called the "Herculean" task of reviewing all pertinent scientific literature relating to Agent Orange. Indeed, Mr. Chairman, there simply is no higher level of expertise anywhere—in the Government or in the private sector—with respect to the effects of dioxin than that available to VA.

And Judge Henderson told us that the Advisory Committee had complied with the Congressional mandate. He told us specifically that the Committee's scientific review was the kind of review that Congress had ordered.

But he told us that we made a mistake. He said we were mistaken in believing that we needed to find a cause and effect relationship between exposure to dioxin and disease before we could service connect the diseases suffered by men and women who had left Vietnam 10, 15, or even 20 years before medical problems manifested themselves. He said that was not what Congress meant when it told VA to make its determinations based on "sound scientific and medical evidence." Judge Henderson said that standard was too strict. And he told us that we had failed to apply the benefit of the doubt rule, which we, frankly, did not think applied to rulemaking.

We could have appealed. Your committee counsel know that. But we didn't. Secretary Derwinski announced that VA was going to accept the decision. Enough time has gone by, he said. It's time to get on with it.

And we are. As you know, Mr. Chairman, we are committed to having final regulations implementing the judge's decision issued by October, rules which will permit us to react promptly to the evolving body of scientific data. We intend to have the Advisory Committee immediately review the evidence in light of those new standards. And we intend never to abandon our mission to find the truth.

We do not know where that search will take us, but the truth is our mandate. And we intend to fulfill it.

The bill before the Committee today, S. 1153, has two key provisions: First, it provides interim compensation benefits to Vietnam veterans suffering from non-Hodgkin's lymphoma and soft-tissue sarcoma, as well as interim dependency and indemnity dependency and indemnity compensation benefits to the survivors of such veterans. Second, the bill sets up a mechanism, wholly separate from VA, to evaluate evidence and make recommendations concerning the association, if any, between exposure to herbicides used in Vietnam and diseases. While VA shares the impatience that prompted S. 1153, we ask that its further consideration be held in abeyance until we have completed our work.

There are suggestive studies which raise questions with respect to non-Hodgkin's lymphoma and soft-tissue sarcoma. The final Selected Cancers Study report from the Centers for Disease Control, which we expect to be available early next year, may shed additional light. We intend to pursue all possible leads in our search for the truth. Should this Committee conclude that the process would be lent credibility by our consulting with additional outside experts, such as the National Academy of Sciences (NAS), we would be pleased to do so if that kind of consultation would not unduly delay our progress. Nor would we object to an expansion of the authorized size of the Advisory Committee to permit additional viewpoints to be represented. Finally, we would not object to an independent review of our conclusions, after the process now underway is completed, by any entity which the Congress believes would lend credibility to the determinations.

We have, I believe, more than demonstrated our good faith. We have the word from the Federal Bench as to the proper standard. And we believe that some of the world's leading experts in this area—the Advisory Committee—should be given a chance to complete their work.

Abandoning the current rulemaking mechanism for identifying herbicide-related diseases in exchange for what is suggested in the bill would add a lot more time to the resolution of the questions. It could take months before this bill becomes law. It will also take time to negotiate a contract with NAS, assuming NAS is willing to take on this mission. Then we must wait for specific appropriations to fund the contract. Further, NAS would essentially start from scratch on a review that has already been done by others, or is well underway. We are looking, Mr. Chairman, at a delay of from 1 to 3 years.

VA—as much as anyone—is acutely aware of the strong feelings on this issue. We want the matter resolved, and are prepared to continue to follow the mandate you gave us 5 years ago. That mandate, Mr. Chairman, centers on a search for truth. We are prepared and eager to continue that search.

ADDITIONAL VIEWS OF SENATORS FRANK H. MURKOWSKI, ALAN K. SIMPSON, AND STROM THURMOND ON S. 1153, THE PROPOSED "VETERANS' AGENT ORANGE EXPOSURE AND VIETNAM SERVICE BENEFITS ACT OF 1989"

S. 1153, as reported by the Committee attempts to resolve the questions raised by the possible health effects of exposure to herbicides such as Agent Orange in Vietnam. We understand the frustration expressed by many Vietnam veterans who believe that either they are, or they may become, ill because of the use of herbicides in Vietnam. We believe the bill has flaws which must be considered during the legislative process. For that reason, we are preparing these additional views.

In response to the concerns of Vietnam veterans, Senator Murkowski introduced S. 1692, the first Senate legislation in the 100th Congress that would have provided interim benefit payments to Vietnam veterans who develop non-Hodgkins lymphoma (NHL). The Senate passed last year legislation which would have provided interim benefits to Vietnam veterans who develop NHL or soft tissue sarcoma (STS). Payments would have been made until mid-1990 by which time the Congress would have had time to examine the results of the Centers for Disease Control (CDC) Selected Cancers Study (SCS).

In considering legislation at this time, however, we believe that the Congress must act in the context of both advancing knowledge and changing VA policies.

Last year, one could argue that legislation previously enacted (Public Law 98-542) to take the issues concerning the possible health effects of exposure to herbicides out of the political arena and to resolve them on the basis of scientific and medical merit was not working. In the context that existed last year, the Senate acted when it appeared VA would not.

This year, the situation has been reversed. On July 17, VA published draft regulations which will lead to scientific consideration of these questions under the ground rules sought by the advocates of compensation payments to Vietnam veterans.

Last year, Senate action substituted for VA inaction. This year, Senate action would preempt VA action. Senate action at this time will repudiate the provisions of Public law 98-542 and place difficult scientific and epidemiological questions in a political forum for resolution at a time when these questions are being revisited in the forum originally intended by the Congress. Irrespective of our individual views on the scientific merits of the case, we believe these are questions the Senate is poorly qualified to resolve. That is why the Congress passed Public Law 98-542 and established the procedures that are going forward today.

In addition to our concerns as to the timing and need for this legislation we are concerned about specific provisions of the proposed legislation. We will discuss them in turn.

Interim Compensation

As noted above, the Senate has supported the concept of interim compensation until the results of the SCS are available. That study will be published in less than a year. The legislation passed by the Senate last year would have provided interim benefits until the summer of 1990. The legislation approved by the Committee would extend, without clearly stated rationale for the additional period of time, that compensation until April 1992. We believe interim compensation should only be paid until Congress has an opportunity to evaluate the studies expected to be published within the next year. Payments should then end, or be continued on the basis of actual service connection.

Privileged Legislation

We are concerned with section 2(h)(2) of the bill which would legislatively amend the rules of both Houses of the Congress so as to require consideration by the full House and Senate, without action by the Committee, of future legislation which would make the so-called "interim" benefits permanent. We believe the Committee's action in reporting this bill, as well as the Senate's action last year, are ample evidence that the Senate will be responsive to the concerns of Vietnam veterans should legislative action be warranted. We see no need to set aside the rules and procedures of the Senate to ensure adequate consideration of the extension of permanence of benefits should that become appropriate. We are apprehensive that repeated use of the expedited consideration procedure will defeat the purpose of the Committee system in the Senate.

Review of Scientific Evidence

Section 4 would establish a procedure for VA to determine if benefits should be paid for NHL, STS, or other diseases, following a review by the National Academy of Sciences (NAS), or another scientific body should NAS decline to conduct the review. We note that Public Law 98-542 has already established a procedure for such a review and decision. We further note that implementation of this review is not going forward under the ground rules sought by advocates for compensation.

Our concern about a redundant NAS review is based on the belief that the questions surrounding Agent Orange should not become the basis for a scientific public works project in a time of tight fiscal and scientific resources. Should the CDC and other ongoing studies fail to support the hypothesis that Vietnam veterans are disproportionately ill, and should NAS support such a finding, we wonder what additional review will be sought. This provision has the appearance of "opinion shopping" for a review or study which will produce the desired answer.

Administrative Procedures

The procedures established by Section 4 define a spectrum of association between exposure and biological effects ranging from "positive association" through "limited positive association" to "insubstantial association". We question the necessity for these new terms since VA is implementing the *Nehmer* decision criteria to determine if an association exists.

In the event of a finding of "positive association" between biological effects and exposure, this section also requires a determination as to whether a Vietnam veteran with the highest level of exposure had the level of exposure necessary for the health effect to be observed. Since some Vietnam veterans (chemical handlers, for example) clearly had atypically high exposure, application of this criterion to the question of Vietnam veterans in general would go far beyond providing the benefit of the doubt in the decisions that would follow from this determination.

In fact, we note that critics of studies that show few adverse health outcomes in Vietnam veterans observe that any health effects resulting from exposure would be obscured because the vast majority of Vietnam veterans were not exposed. This contention is supported by CC studies of serum dioxin levels which verified, almost without exception, that Vietnam veterans carry a dioxin burden similar to the level of veterans who were never in Vietnam. Thus, the health effect of the highest possible level of exposure would not be applicable to Vietnam veterans in general.

Analysis of Clinical Data

We are also concerned by the provision in section 5 requiring VA to analyze and report on the clinical treatment records of veterans treated for conditions believed by the veteran to be the result of exposure. Since this is a population self-selected on the basis of individual perception of both exposure and etiology, there is little, if any, scientific gain to be realized from such a study. Our concern is that the cost of such analysis and reporting will come at the expense of VA patient care. This comes at a time when the Congress is under pressure to add, rather than diminish, health care resources. The provision will have the effect of writing into law the assertion that exposure can cause harm.

Tissue Archiving

Our concerns for the tissue archiving provisions of section 6 are similar to our concerns regarding clinical record analysis. We question that such archiving of a speculative and self-selected basis is scientifically useful or the best use of limited VA resources.

Independent Study Funding

Section 7 of the bill authorizes VA funding of independent studies as to the feasibility of conducting additional research into possi-

ble health effects of exposure to dioxin, exposure to other agents, or service in Vietnam. As a result of concern (which we share) for Vietnam veterans and their health, these topics have been the subject of some of the most intense epidemiological studies ever conducted. Because of intense political and public interest, these studies have been subject to intense critical scrutiny, including review by the Office of Technology Assessment (OTA), the scientific advisory arm of the Congress. Given the amount of study already conducted and underway we question the advisability of diverting scarce funds to study the feasibility of doing even more studies. Again, this provision has the earmarks of shopping for additional opinions because the opinions already purchased fail to provide the desired result.

Report on Treatment for Dioxin Exposure

Section 9 serves no purpose other than to enshrine in statute what the proponents have been unable to establish through science: The idea that exposure to dioxin may lead to a result requiring treatment.

Extension of Authority for Priority Medicare Treatment

Section 10 would extend the authorization for priority medical care from December 31, 1990 to December 31, 1993. Under current law, veterans who believe they are ill due to exposure to radiation or herbicides are not eligible for VA medical care on a priority basis. The sunset date for this authority was extended to December 31, 1990 in Public Law 100-687, enacted last year.

The basis for this priority for care is a belief that VA should provide treatment until the questions concerning service connection (which would provide automatic entitlement to care) of veterans for their illnesses are resolved. We note that due to the enactment of Public Law 100-321 in May 1988, veterans exposed to radiation now enjoy a presumption of service connection for thirteen different cancers. As we have noted above, studies which will provide weighty evidence on the question of cancer in Vietnam veterans are expected in the spring of 1990. Congressional action and expected studies will soon render the rationale for this priority moot. Veterans will either be service connected for their illnesses, or a determination will have been made that their illnesses are not related to their service. In one case the priority which would be extended for three years by this section would be redundant; in the other, it is not justified.

We are concerned that this extension will come at the expense of treatment for other veterans who would, on the basis of income, otherwise have a higher priority for care than the veterans favored by this provision.

SUMMARY

We believe the bill as reported is a dramatic expansion from the provision passed by the Senate last year. The expansion is justified neither by scientific developments nor VA inaction. On the contrary, Secretary Derwinski's bold action in revisiting VA procedures for implementing legislation already on the books obviates the need for additional legislation. Enactment of this legislation would also serve to divert VA resources from direct patient care.

FRANK H. MURKOWSKI,
Ranking Minority Member.
ALAN K. SIMPSON.
STROM THURMOND.

CHANGES IN EXISTING LAW MADE BY S. 1153 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * * * *

PART II—GENERAL BENEFITS

* * * * * * *

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

SUBCHAPTER I—GENERAL

Sec.
301. Definitions.
302. Special provisions relating to surviving spouses.

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

310. Basic entitlement.
311. Presumption of sound condition.
312. Presumptions relating to certain diseases and disabilities.
312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.
313. Presumptions rebuttable.
314. Rates of wartime disability compensation.
315. Additional compensation for dependents.

* * * * * * *

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

* * * * * * *

§ 312. Presumptions relating to certain diseases and disabilities

(a) * * *

* * * * * * *

(d) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era, the disease of chloracne shall be considered to have been incurred in or aggravated by such service in Vietnam, notwithstanding there is no record of evidence of such disease

during the period of such service in Vietnam, if such disease or another acneform disease consistent with chloracne became manifest to a 10 percent degree of disability or more within one year after the last date on which that veteran performed such service in Vietnam.

§312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

(a)(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effects of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

(b)(1) Whenever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

(2) The Secretary shall periodically (not less often than biennially)—

(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

(B) determine whether any disease listed in such regulations does not have positive association with such effects.

(3) The Secretary shall make determinations for the purposes of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

(c) In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and estimates of a contract scientific organization as provided in this section.

(d)(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

(A) to determine, in the case of each herbicide agent—

(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

(ii) which diseases (if any) have limited positive association with such biological effects;

(iii) which diseases (if any) have insubstantial association with such biological effects; and

(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

(A) Non-Hodgkin's lymphoma.

(B) Each soft-tissue sarcoma.

(C) Lung cancer.

(D) Each other cancer.

(e)(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents, including and evaluation of the CDC Selected Cancers Study report; and

(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

(f) A contract entered into under subsection (c) of this section in connection with the Secretary's periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have

become available since the last such survey and evaluation under this section; and

(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

(g)(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veteran's Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

(2) Each report shall contain—

(A) the name each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

(C) the name of each disease (if any) determined to have insubstantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

(i) discussion of the biological basis for the association;

(ii) the contract scientific organization's estimate of the statistical significance of the association;

(iii) the contract scientific organization's estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with highest level of exposure to that herbicide agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this subsection and include in such report—

(i) a description of the evidence that supports such determination;

(ii) a description of the evidence (if any) that supports alternative conclusions; and

(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in

clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the later of (A) the date 60 days after the date on which the contract scientific organization obtains a copy of the CDC Selected Cancers Study report, or (B) the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989.

(h)(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

(A) for the purpose of subsection (b)(1) of this section—

(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

(B) transmit to the Committees and Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

(i) include in the report to the Committees on Veterans' Affairs a discussion of the scientific basis for not including that disease in the proposed regulations; and

(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b). Such regulations shall be effective on the date of issuance.

(i)(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

(A) determine in accordance with subsection (b)(3) of this section whether—

(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

(ii) disease listed in such regulations does not have positive association with such effects; and

(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report contain-

ing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may be, pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

(j) Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

(k) The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

(l) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

(m) For the purposes of this section—

(1) the term "Vietnam veteran" means a veteran who performed Vietnam service;

(2) the term "Vietnam service" means active military, naval, or air service in Vietnam during the Vietnam era;

(3) the term "herbicide agent" means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era;

(4) the term "biological effect", with respect to exposure to an herbicide agent, means—

(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

(B) each biological effect of such exposure on humans that it is reasonable to infer on the basis of the known bio-

logical effects of such exposure on appropriate animal models;

(5) the term "positive", with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association;

(6) the term "limited positive", with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association;

(7) the term "insubstantial", with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that there is some credible evidence for the association but the evidence is not substantial;

(8) the term "relative risk", with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section, shall have the meaning determined by such organization and specified in such report;

(9) the term "contract scientific organization", with respect to a contract under this section, means—

(A) the National Academy of Sciences; or

(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate expertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into;

(10) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma; and

(11) the term "CDC Selected Cancer Study report" means the report submitted to Congress by the Secretary of Veterans Affairs that contains the final results of the Selected Cancer Study conducted by the Centers for Disease Control pursuant to section 307 of the Vetrans Health Programs Extension and Improvement Act of 1979 (Public Law 96–151; 38 U.S.C. 219 note).

§ 313. Presumptions rebuttable

(a) Where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases within the purview of section 312 *or 312A* of this title, has been suffered between the date of separation from service and the onset of any such diseases, or the disability is due to the veteran's own willful misconduct, service-connection pursuant to section 312 *or 312A* of this title will not be in order.

(b) Nothing in section 312 *or 312A of this title or subsection (a) of this section shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active military, naval, or air service.*

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 610. Eligibility for hospital, nursing home, and domiciliary care

(a)(1) * * *

* * * * * * *

(e)(1)(A) * * *

* * * * * * *

(3) Hospital and nursing home care and medical services may not be provided under or by virtue of subsection (a)(1)(G) of this section after December 31, [1990.] *1993.*

* * * * * * *

VETERANS' BENEFITS IMPROVEMENT ACT OF 1988

(Public Law 100-687, November 18, 1988)

* * * * * * *

DIVISION B—VETERANS' BENEFITS IMPROVEMENT

* * * * * * *

TITLE XII—AGENT ORANGE AND RELATED PROVISIONS

* * * * * * *

SEC. 1204. OUTREACH SERVICES.

(a) ONGOING OUTREACH PROGRAM.—*(1)* The Administrator shall conduct an active, continuous outreach program for furnishing to veterans of active military, naval, or air service who served in the Republic of Vietnam during the Vietnam era information relating to—

[(1)]*(A)* the health risks (if any) resulting from exposure during that service to dioxin or any other toxic agent in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam [era, as such information on health risks becomes known;] *era;* and

[(2)] *(B)* services and benefits available to such veterans with respect to such health risks.

(2) The Secretary of Veterans Affairs shall furnish the information described in paragraph (1) to the individuals listed in the Department of Veterans Affairs Agent Orange Registry. Each year the Secretary shall (A) update that information, and (B) furnish the updated information to such indivduals.

* * * * * * *

SEC. 1205. RANCH HAND STUDY.

(a) * * *

* * * * * * *

(c) ADVISORY RELATIONSHIP.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information.

[(c)] *(d)* SCHEDULE OF REPORTS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Veterans' Affairs and the Committees on Armed Services of the Senate and the House of Representatives a schedule of reports to be prepared by the Secretary of the Air Force or the Secretary of Defense on the progress and findings of the Ranch Hand Study. *The schedule shall provide for the preparation and submission of annual reports and a final report.*

(2) Each report referred to in paragraph (1) shall include the following:

(A) A discussion of the progress made in the Ranch Hand Study during the period covered by the report.

(B) A summary of the scientific activities conducted during that period and the findings resulting from those activities, to be prepared by the scientists conducting those activities.

(3) Such a report need not contain (A) a discussion of progress discussed in any other report prepared by the Department of Defense (under this section or otherwise) regarding the Ranch Hand Study, or (B) a scientific summary included in any other such report, unless modification of such discussion or summary is appropriate for completeness, accuracy, and currency.

(4) The Secretary of Defense shall submit to the committees referred to in paragraph (1) a copy of each report referred to *in* that paragraph.

[(d)] *(e)* DEFINITIONS.—For purposes of this section:

(1) The term "Ranch Hand Advisory Committee" means the committee known as the "Advisory Committee on Special Studies Relating to the Possible Long-term Health Effects of Phenoxy Herbicides and Contaminants" established by the Secretary of [Defense] *Health and Human Services* to monitor the conduct of the Ranch Hand Study.

(2) The term "Ranch Hand Study" means the special study conducted by the Secretary of the Air Force relating to the possible long-term health effects of phenoxy herbicides and contaminants on Air Force personnel who participated in Operation Ranch Hand in the Republic of Vietnam during the Vietnam era.

* * * * * * *

○